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2 *FROM THE PRESIDENT*—Neoconservatives and the Freedom Philosophy *by Richard M. Ebeling*

4 *PERSPECTIVE*—The Season of Protectionism *by Sheldon Richman*

6 Free-Trade Theory No Longer Applies? It Just Ain't So! *by Gene Callahan*

FEATURES

8 **Free Markets, the Rule of Law, and Classical Liberalism** *by Richard M. Ebeling*

18 **The Wisher and the Legislator: A Lesson from a Fairy Tale** *by Joseph S. Fulda*

20 **Losing the Law: From Shield to Weapon** *by William L. Anderson and Candice E. Jackson*

26 **Scotland: The Bitter Taste of Independence** *by James L. Payne*

29 **Rome and America: The Ideology of Decline** *by Harold B. Jones, Jr.*

36 **Estonia Moves to Liberty** *by Norman Barry*

39 **Capital Letters**

Marcus Aurelius

COLUMNS

16 *IDEAS AND CONSEQUENCES*—Telecom Regulations Don't Create Competitive Markets *by Lawrence W. Reed*

24 *THE THERAPEUTIC STATE*—Autogenic Diseases *by Thomas Szasz*

34 *OUR ECONOMIC PAST*—Would the Poor Go Barefoot with a Private Shoe Industry? *by Stephen Davies*

47 *THE PURSUIT OF HAPPINESS*—Have a Canadian Orange *by Russell Roberts*

BOOK REVIEWS

41 **Give Me a Break: How I Exposed Hucksters, Cheats, and Scam Artists and Became the Scourge of the Liberal Media . . .** by John Stossel, reviewed by Richard M. Ebeling; **FDR's Folly: How Roosevelt and His New Deal Prolonged the Great Depression** by Jim Powell, reviewed by Burton Folsom; **Can Gun Control Work?** by James B. Jacobs, reviewed by Jeffrey A. Miron; **The Real Environmental Crisis: Why Poverty, Not Affluence, Is the Environment's Number One Enemy** by Jack M. Hollander, reviewed by Jane S. Shaw.

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by Richard M. Ebeling

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Neoconservatives and the Freedom Philosophy

The winter 2004 issue of *The Public Interest* contains an article by Adam Wolfson, the publication's editor, on "Conservatives and Neoconservatives." Mr. Wolfson outlines some of the central ideas of neoconservatism by contrasting them with what he refers to as traditionalist conservatism, paleoconservatism, and libertarian conservatism.

Before World War II, he points out, conservatism was really classical liberalism, with strong emphases on individual freedom, laissez-faire economics, and progress through scientific improvement. In the postwar period, under the influence of Russell Kirk's 1953 book, *The Conservative Mind*, Mr. Wolfson says, American conservatism was transformed into a political philosophy critical of modernity and its unreflective belief that social and economic change always means progress. The Kirkian conservatives emphasized the roles of tradition, custom, local community, and institutional stability in maintaining the health and balance of society. The paleoconservatives, identified by Mr. Wolfson with ideas espoused by Pat Buchanan and Paul Gottfried, are anti-free trade, anti-immigration, isolationist in foreign policy, and suspicious of political and social equality.

As for libertarianism, Mr. Wolfson states that "It is progressive, and aims at expanding economic freedom and individual choice ever-forward. Libertarians oppose all regulation, whether of markets or morals." He says that libertarians have a "love affair" with new technologies as the path to human happiness. And, in addition, they discount any role or place for "the general welfare" and are opposed to democratic decision-making in the shaping of a "public ethos." Thus in their pursuit of advancing the right of individual choice, the libertarian, he claims, is happy if citizens are indifferent to the well-being of their country.

What, then, does the neoconservative stand for? As summarized by Mr. Wolfson, neoconservatives recognize the value of traditions and customs passed down by earlier generations, but have no desire for or belief in returning to a past that is unrecoverable and unacceptable to the vast majority of contemporary Americans. Nor are neoconservatives desirous of a turning inward from the rest of the world, as he portrays the paleoconservatives; and the neoconservatives are against anything that would smack of a denial of democratic and social equality.

In contrast to Mr. Wolfson's view of the libertarian perspective, neoconservatives are not willing to sacrifice the idea of a public arena in which the democratic polity establishes standards for the common good to which all members of society should conform. Specifically, he says that neoconservatism has no inherent disapproval of the welfare state, which he suggests the vast majority of Americans desire as a means of overcoming "insecurity." Only those welfare-state programs

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corrupting of family, marriage, and the work ethic should be opposed. In addition, neoconservatives believe in U.S. political and military interventionism around the world to advance democracy; but the goal of such foreign interventionism, he argues, is to maintain America's interests as a "great and powerful democracy."

Mr. Wolfson's portrayal of libertarianism and neoconservativism offers an opportunity to restate the fundamental premises of what FEE's founder, Leonard Read, long referred to as the "freedom philosophy." Over a 300-year history the advocates of human freedom have argued that rights reside only in individuals, who form the unique "building blocks" of the social, economic, and political order. Society should be viewed as the mutually beneficial relationships that individuals form for the improvement of their circumstances. The role of government, as understood, for example, by the American Founding Fathers, was to protect the rights of the individual from invasion by predatory plunder so each man may be secure in his life, property, and freedom to pursue his happiness as he sees it.

The Public Ethos

The "public ethos" is not created by government and, if it is to be healthy and consistent with the preservation of a free society, must not be controlled or manipulated by government. What is the "public ethos"? It comprises society's guiding beliefs, ideas, attitudes, customs, institutions, and ideals about the normative standards and rules for personal and interpersonal conduct. Its represents what most members of society consider to be acceptable and moral conduct in the relationships that men have with each other.

The public ethos of a free society includes strong beliefs in individual self-responsibility, the rights and dignity of the individual, and a sense of the morality of voluntary and peaceful relationships among men. It also includes the ideal that each individual should be viewed as an end in himself and not the pawn of others. And it nurtures the philosophical and religious ideas of compassion and duty in participating in charitable good works to assist the unfortunate and the truly needy among us.

The public ethos of a free society rejects as inconsistent with liberty any notion that majorities or minorities may use the democratic process to restrict the freedom of the individual in his social, economic, and personal actions as long as he does not in any way violate the rights of others to peacefully go about their affairs. It does not believe that simply because a majority in society wants government welfare programs, because such programs give them a sense of protection from the insecurities of life, that this morally justifies the power of political coercion to redistribute wealth and limit the choices of other members of society to determine what is best for themselves, their families, and others they may care about.

The advocate of liberty is on guard against all expansions of government into the private lives and free associations of individuals because he considers political power to be corrupting and harmful to the creative potential in man. Political interventions and regulations intimidate man's mind and conscience, restrict his productive actions, weaken or eliminate the mutually beneficial and charitable associations among people, and undermine the moral sense of self-responsibility and voluntary duty to others in society.

Likewise, the friend of freedom believes that any "greatness" that America may possess on the international stage should come from being an example of individual freedom practiced at home, which then serves as an ideal for others around the world to emulate. Furthermore, political and military interventions abroad threaten the freedom and prosperity of the American citizenry, because of the costs of these global activities.

These are the freedom principles and the public ethos that we have been losing in America, and neoconservatism offers no alternative to regain them. □

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PERSPECTIVE

The Season of Protectionism

N. Gregory Mankiw, the Harvard professor who now chairs the President's Council of Economic Advisers, had a rough lesson in Washington culture a few months ago. Talking to reporters, he set off a firestorm when he said, "Outsourcing is just a new way of doing international trade. More things are tradable than were tradable in the past and that's a good thing." He acknowledged that this can cause individual hardship, but added, "[W]e shouldn't sort of retreat from the basic principles of free trade."

"Outsourcing" refers to the hiring of labor in other countries in order to cut costs and increase efficiency. This is nothing new, but because of changes in the world, it is taking a new form. American manufacturers, such as textile and shoe companies, long ago turned to foreign labor by setting up factories in other countries. What's new is that high-paying "knowledge jobs," such as computer programming, can now also be outsourced easily because the Internet makes the movement of information cheap and fast. Advanced telecommunications also makes it efficient to farm out less-skilled jobs, such as telephone support services. As a result of these advances, American workers who have never thought about foreign competition now must do so.

Cable-TV talk shows and newspaper columns are filled with alarm that outsourcing will drain the United States of most of its high-paying jobs. Mankiw tried to point out that alarmism is unjustified. Outsourcing is just a variation on an old theme: getting the most out of scarce resources. In the past it did not reduce us to poverty. Why would it do so now?

But in the political season, good economic theory is not often welcome. Mankiw works for a Republican President, but that didn't stop members of the GOP, such as House Speaker J. Dennis Hastert, from denouncing Mankiw's position: "I understand that Mr. Mankiw is a brilliant economic theorist, but his theory fails a basic test of real economics.

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An economy suffers when jobs disappear. Outsourcing can be a problem for American workers and for the American economy." One Republican congressman called for his resignation.

The White House suggested that President Bush stood behind his chief economist, but the words belied that stance. The spokeswoman said the President "is committed to free and fair trade. He is committed to a level playing field."

In fact, those words yanked the rug out from under Mankiw. "Fair trade" and "level playing field" are code words that endorse regulations for the developing world that are intended to make outsourcing economically pointless. Poor societies simply cannot afford those government impositions.

With all the flak flying, Mankiw was forced to retreat rhetorically. In a letter to Hastert, he wrote, "My lack of clarity left the wrong impression that I praised the loss of U.S. jobs." Hastert responded by saying America needs a better environment for job creation. His message was mixed, but at least he included low taxes and an end to frivolous lawsuits in the package.

As the *New York Times* and *Washington Post* editorialized, Mankiw's initial statement is correct. If a task can be done more cheaply with foreign labor, the savings are available for new investment. That is what has always happened—when the economy is allowed to work. The American computer programmer who loses his job to an Indian programmer is a visible "victim" of free trade. The *invisible* beneficiaries are the workers who will find new opportunities in yet-unknown industries thanks to the freed-up capital.

The case for free trade may be counter-intuitive, and it doesn't lend itself to sound bites. No wonder it gets battered at election time.

* * *

If liberty and prosperity are to have a future, people must grasp the meaning of free enterprise, the rule of law, and classical liberalism. Richard Ebeling discusses the critical connections.

There's a lesson in those fairy tales about the granting of three wishes. Joseph Fulda draws some inferences.

An ominous development is emerging: the conversion of business regulations into potential *criminal* offenses, complete with prison time as the penalty for violation. William Anderson and Candice Jackson examine this worrisome trend.

The people of Scotland had craved independence for many years. They finally won it, but it hasn't worked out as expected, and disillusionment has set in. James Payne finds fault in the welfare state.

Does the decline of Rome have implications for modern-day America? In the realm of ideology, Harold Jones says yes.

An economic success story in eastern Europe is almost totally ignored. Norman Barry has the details about Estonia.

Here's what our columnists have come up with this month: Richard Ebeling contrasts neoconservatism with the freedom philosophy. Lawrence Reed discusses the bad effects of telecom regulation. Thomas Szasz ponders self-inflicted disease. Stephen Davies sees a refutation of government control in the shoe industry. Russell Roberts considers the attack on cheap foreign labor. And Gene Callahan, reading claims that free-trade theory is outmoded, retorts, "It Just Ain't So!"

Book reviews this month focus on John Stossel, FDR, gun control, and the environment.

—Sheldon Richman

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Free-Trade Theory No Longer Applies?

It Just Ain't So!

In an op-ed in the January 6 *New York Times*, "liberal" U.S. Senator Charles Schumer and conservative economist Paul Craig Roberts tapped into the anxiety felt by many Americans about their changing roles in the global economy. The authors argued that new economic conditions undermine the classic argument for free trade:

> The case for free trade is based on the British economist David Ricardo's principle of "comparative advantage"—the idea that each nation should specialize in what it does best and trade with others for other needs. . . .
>
> However, when Ricardo said that free trade would produce shared gains for all nations, he assumed that the resources used to produce goods—what he called the "factors of production"—would not be easily moved over international borders. Comparative advantage is undermined if the factors of production can relocate to wherever they are most productive: in today's case, to a relatively few countries with abundant cheap labor. In this situation . . . some countries win and others lose.

For many advocates of liberty, the primary argument for free trade is a moral one, succinctly captured by FEE founder Leonard Read in the title of his book *Anything That's Peaceful*. They contend that if two people voluntarily enter into an exchange of goods, then no one else has a right to aggressively disrupt it. The moral status of such interference does not depend on whether the people live in different countries.

But those who argue for free trade on moral grounds are usually pleased to hear that it *also* leads to prosperity. Furthermore, there are many people who are swayed chiefly by utilitarian arguments: Will policy A make their nation's residents better off than policy B? Therefore it's worth examining the claim that, under modern economic conditions, Americans are being hurt by free trade with low-wage countries such as China.

Schumer and Roberts assert that they are not "old-fashioned" protectionists. They favor free trade in goods. But Roberts claims that there is a fundamental economic difference between an American's purchasing clothing from a Chinese manufacturer and his purchasing it from another American who has opened a factory in China. In the first case only the clothing moves internationally, while in the second case capital also moves.[1]

However, if China is more suited to clothing production than America is and if there is free trade in goods, then capital *value* will move to China, however mobile American capital is. Clothing-related capital goods in China will increase in value while those in America will decrease. The difference between Roberts's two cases is who will own the appreciating capital goods.

When an American capitalist moves a factory to China, factory jobs *do* leave the country, but the profits still return to the United States. Not only does the American capitalist benefit, but so also might many other Americans. It is true, as critics of free trade often point out, that some of the beneficiaries may hold low-wage service jobs, such as gardeners, maids, waiters, and nannies. While their pay may not be impressive by American standards, they no doubt appreciate having a job. In fact, many teachers, engineers, and managers from poorer countries eagerly seek such jobs here. Fur-

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thermore, the American capitalist is also likely to employ higher-wage workers, such as accountants, architects, massage therapists, chefs, and chiropractors.

If American capitalists are denied opportunities overseas, foreign capitalists will take advantage of them. If, say, a Swiss capitalist does so, those jobs will be in Switzerland instead of the United States. How, exactly, would that benefit Americans?

Resource Immobility

Schumer and Roberts are wrong in contending that the case for free trade depends on productive resources being relatively immobile between countries. As Ludwig von Mises said in *Human Action*:

> People cavil much about Ricardo's law . . . [because it] is an offense to all those eager to justify protection . . . from any point of view other than the selfish interests of some producers. . . .
>
> It has been asserted that Ricardo's law was valid only for his age and is of no avail for our time which offers other conditions. [But] if one assumes that capital, labor, and products are movable . . . then it is superfluous to develop a theory of international trade as distinguished from national trade. . . .
>
> The teachings of the classical theory of interregional trade are above any change in institutional conditions.[2]

In other words, international trade is different from trade within a nation only when national borders restrict the movement of productive resources. But Ricardo's law of comparative advantage applies among *all* people, whether or not they live in different countries. Mises preferred to call it "the law of association," since it is the foundation of all interpersonal exchange.

Because each person differs from everyone else in his relative ability at different tasks, any individual will always have some comparative advantage over any other person. Therefore, any two individuals always have some mutually beneficial way to cooperate. And since trade between nations always boils down to trade between individuals living in those nations, any two countries also will have mutually beneficial trade available to them.

Of course, Schumer and Roberts are not merely imagining that some Americans are having a difficult time because of the greater ease with which certain jobs, such as high-paying high-tech jobs, can now be moved overseas. An honest advocate of free trade must admit that there will often be people who are made worse off, at least in the short run, by the freedom to trade internationally. But the same is true of trade *within* the borders of a country: If you open a restaurant near to and better than mine, my business will suffer.

It might be pleasant to live in a world of unlimited resources, where everyone who wanted to run a restaurant could do so without having to compete for customers' scarce dollars. But since we don't, the fact that my situation might worsen because of your business activities is an unavoidable consequence of the freedom to buy from and sell to whomever one wishes. If we try to prevent all such unpleasant outcomes, we will eliminate the market economy and regress to a hand-to-mouth existence.

Those who find that scenario enticing are welcome to retreat to the wilderness and live that way today, without trying to impose their vision on others. The rest of us should realize that freedom *necessarily means* that we can't pre-arrange social affairs to guarantee every outcome we desire. The result of voluntary interactions among free people will not always be to the liking of every interested party. The alternative to a market economy is not an economy in which someone can control all outcomes, but a "non-economy," or, as Mises called it, "planned chaos."

—Gene Callahan
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1. Paul Craig Roberts, Mises.org Blog, http://www.mises.org/blog/archives/2004_01.asp.
2. Ludwig von Mises, *Human Action*, Scholar's Edition (Auburn, Ala.: Ludwig von Mises Institute, 1998), pp. 160–63.

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Free Markets, the Rule of Law, and Classical Liberalism

by Richard M. Ebeling

The history of liberty and prosperity is inseparable from the practice of free enterprise and respect for the rule of law. Both are products of the spirit of classical liberalism. But a correct understanding of free enterprise, the rule of law, and liberalism (rightly understood) is greatly lacking in the world today.

Historically, liberalism is the political philosophy of individual liberty. It proclaims and insists that the individual is to be free to think, speak, and write as he wishes; to believe and worship as he wishes; and to peacefully live his life as he wishes. Another way of saying this is to quote from Lord Acton's definition: "By liberty I mean the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and custom, and opinion."[1] For this reason, he declared that the securing of liberty "is the highest political end."[2]

Lord Acton did not say, you will notice, that liberty is the highest end, but rather the highest political end. In the wider context of a man's life, political and economic liberty are means to other ends. What ends? Those that give meaning and purpose to his sojourn on earth. Liberalism does not deny that there may be or is one ultimate Truth, or one moral "right," or one correct conception of "the good" and "the beautiful." What liberalism has argued is that even the wisest and best men are mere mortals. They lack God's omniscience, omnipresence, and omnipotence. Mortal men look at and understand the world within the confines of their own imperfect knowledge, from the perspective of their own narrow corner of existence, and with extremely limited mental and physical powers compared to those possessed by the Almighty.

As a result, since no man may claim access to an understanding of man and his world equal to God's, no man can claim a right to deny any other person the freedom to follow his conscience in finding answers to these profound and ultimate questions. They are so crucial to man's very being as a spiritual and moral person that they must be removed from the arena of politics and political control. They must be left to the private and personal confines of each man and his conscience.

The reason for this should be evident. Political control is fundamentally the power of physical force. It is the right to demand obedience from the citizenry either to do or not do something under the threat of the use of coercion. Political power can be used to command people regarding how they may live, how they may think, and how they may act. It is one man bending the will of another to his wishes under the threat of physical harm.[3]

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Some men have faced such threats or uses of force and not given up their faith or beliefs or ideas. But liberalism argues that no man should be confronted with torture or death because of where his conscience leads him. Furthermore, once political power is used to dictate what men may believe and how they may peacefully act, society is faced with an endless struggle as those with conflicting faiths, beliefs, and ideas battle for control of the reins of political authority. It becomes a life-and-death confrontation to determine whose conception of the good, the beautiful, the right, and the just shall be imposed on all. In such a battle over truth and virtue man's world becomes an earthly hell of human and material destruction.

There thus arose the idea of tolerance, that each man should respect the right of every other man to be guided by the dictates of his conscience.[4] But even tolerance was soon seen to be authoritarian; it implied that the one tolerating the free thoughts and actions of another was doing so as if he were giving a privilege to someone else, a privilege that if given could at any time be taken away. Hence, it was insisted that freedom of conscience was a fundamental right possessed by all men, and not something permitted or allowed, say, by a majority for the benefit of a minority.[5]

But how was the political authority—the government—to be prevented from overstepping its boundaries and encroaching on such individual rights as freedom of conscience and other elements of personal liberty? How were men with political power to be restrained from abridging other men's rights? All law is man-made, regardless of the source of the inspiration for the law. It is men who articulate and agree on the law, who codify it, and who establish and enforce the procedures and mechanisms for its respect and enforcement. Man, therefore, can never be separated from law and the legal process.

Public Accountability

A way to assure that society lives under a rule of law and not a rule of men is to insist that even those who implement and enforce the law be held accountable under certain clearly defined procedures in their dealings with the citizenry. Or as the English legal philosopher Albert Venn Dicey expressed it in the late nineteenth century: "With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."[6]

An essential element of the rule of law is that it specifies what government may not do to the citizenry. For example, neither the government nor its various legal agents may hold an individual without bringing charges against him before a judge within a specified period of time. The writ of habeas corpus assures that no man is physically seized and held for an indefinite duration without charges being brought against him in a court of law. If it is not demonstrated to the court that a breach of the law has occurred and that there is sufficient evidence for holding the accused, he must be let go.[7] Or as Dicey explained it, "Liberty is not secure unless the law, in addition to punishing every kind of interference with a man's lawful freedom, provides adequate security that everyone who, without legal justification, is placed in confinement shall be able to get free."[8]

A distinctive quality and merit of the rule of law is that it attempts to, if not completely eliminate, then reduce as much as possible all arbitrary power in the hands of those who administer the political regime and the legal order. Friedrich Hayek, for example, has emphasized that the rule of law refers to laws of an abstract and general nature equally applied to all men independently of any particular circumstance.[9]

Since this may seem rather nebulous, it can be better understood through the expression *end-independent rules*.[10] We can think of this, for example, in terms of the rules of road. These rules specify whether cars are to be driven on the right or left side of the road; that all cars must stop and wait while the traffic light is red, and may go when the light turns green; that posted speed limits must be followed; and that if a police car or an ambulance is coming down the road, all

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other drivers are to pull over and stop until it has passed.

These rules of the road are general and uniform, in that they apply equally to all drivers and do not privilege or burden anyone. Furthermore, as long as every driver follows these rules, he is free to travel on the roads whenever he desires, for whatever purpose he may have in mind. Nor can any driver be pulled over by police patrolling the roads and highways for a traffic violation unless there is an infraction of these general and uniform rules of the road.

The general and abstract rules are "end-independent" because they do not imply or require any particular outcome or result from the actions and interactions of the citizenry, as long as they follow the rules. Thus, whether people follow the rules of the road to get to work, or to visit the family dentist, or simply to get out of the house for a while and just drive around is immaterial. The very nature of a free society under the rule of law is that the society, itself, has no purpose, or "manifest destiny" or "historical role" that it is called upon to play. A free society has no plans or purposes separate from the individual plans and purposes of its individual citizens.

Selfishness versus Great Causes

That a free society has no plan or purpose or higher calling independent of those of its citizens has bothered many who think that nations should have "callings" to "greatness." They see in the individual plans and purposes of the citizenry a narrowness and selfishness not worthy of great causes and great men. One leading voice in the first half of the twentieth century who wanted nations to pursue great causes under great men was Werner Sombart, a German Marxist who later in the 1930s became an outspoken apologist for Hitler's National Socialism.[11]

During World War I, Sombart published a small volume of what he called "patriotic reflections" titled *Traders and Heroes*.[12] He contrasted the trader or man of commerce, who, Sombart insisted, sees no farther than his own profits to be made through market transactions, with the spirit of the hero that brings forth the virtues of courage, obedience, and self-sacrifice. "The trader," Sombart said, "speaks only of 'rights,' the hero only of his duties."[13]

Now, of course, the question that Sombart's depiction of the characteristics of the "hero" leaves unanswered is: obedience to whom, and sacrifice for what? In Sombart's view it was the state, through its political leaders, that dictated the goals for which the citizenry was to make those sacrifices and that demanded obedience to achieve the national tasks. The individuals of the society were to sacrifice their own goals, purposes, plans, and dreams. These were narrow, mundane, and petty. The great political leaders make the other members of society conform to a higher plan and purpose, one which they claim to discern through intuitive insights and understandings that ordinary men cannot comprehend or grasp. Hence, they are expected to obey the commands of those leaders in the service of an imposed hierarchy of ends to which they must sacrifice their individual plans and purposes.

In a society of Sombart's heroes, the rules under which the citizenry now act are end-dependent. That is, the legal rules and regulations under which men are made to live direct them to act and interact in ways that are meant to assure particular outcomes. The citizenry's actions are made to follow paths leading to the outcomes that the political leaders consider the desirable configuration for the society. How else can it be assured that the actions of all the people move in the direction that the nation's call to greatness demands? It should be clear that this requires the abrogation of the individual's own freedom of action, choice, and decision-making. He is made into the tool of another man's ends. He serves ends that others have assigned to him, and not his own.[14]

It should also be clear this is why those who desire to assign higher purposes and callings for society tend to be suspicious of and often actively hostile toward free enterprise and the market economy. The essence of every type of collectivism, whether it be called socialism, communism, fascism,

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Nazism, or the interventionist-welfare state, is the desire and intention of imposing on society a politically engineered design to which all men are expected and, if required, forced to conform.

Adam Smith, in his first book, *The Theory of Moral Sentiments*, referred to the social engineer as "the man of system," who looks at society as if it were a giant chessboard upon which he moves the human chess pieces until the overall pattern created is one to his own liking. What the man of system totally disregards is that each of these human pieces on the chessboard of society has his own will, wishes, desires, dreams, goals, values, and beliefs, which motivate his own movements independent of any attempt by that social engineer to direct and dictate his place and position in society.[15]

Property Provides Autonomy

Classical liberalism has always emphasized the inseparable connection between individual liberty and the right to private property. Partly it has been based on the idea of justice: that which a man produces honestly and peacefully through his own efforts, or which he acquires through voluntary acts of exchange with others, should be considered rightfully his. The case for private property has also been made on the basis of utilitarian efficiency: when men know that the rewards from their work belong to them, they have the motives and the incentives to apply their industry in productive and creative ways.[16]

But in addition, the classical liberal has defended the institution of private property because it provides the individual with a degree of autonomy from potentially abusive political power. Private property gives the individual an arena, or domain, in which he has the ability to shape and design his own life, free from the control of political force. As a private owner of some of the means of production—even if it be only his own labor—he can search out the employment for himself that he considers most attractive and profitable, given his own personal purposes and plans. A community of individuals, each of whom owns varieties of property that he is at liberty to apply and utilize in various ways, provides a network of potential relationships of production, trade, and association among men outside and independent of the orbit and control of government. Private property gives reality to the ideal of individual freedom.[17]

The networks of voluntary, peaceful, and private association form the elements of what has been called "civil society." They are the "intermediary institutions" that stand between the power of the state and the single, isolated individual; they supply support and give assistance to the individual in the economic, social, cultural, and spiritual needs of life. But they also offer protection and strength to the lone individual who otherwise would face the power of government on his own. It is not surprising, therefore, that historically the more the power and intrusive reach of the government extends into the affairs of the citizenry, the more the state attempts in various ways to undermine and replace these voluntary associative institutions of civil society with its own bureaucratic structures. The weakening or elimination of the intermediary institutions of civil society leaves the individual increasingly dependent on the political caprice and largess of those who manage the agencies of government. He becomes a pawn in the hands of those men of system whom Adam Smith warned us against.[18]

Where the rule of law is practiced and respected, the creative energies of man are set free. Each man is at liberty to utilize his own knowledge for his own purposes, but the very nature of the free-market economy is that he must apply that knowledge and his abilities in ways that serve the ends of others in society as well. Since no man can attain all his goals, beyond some of the more primitive ones, through his own labor and the particular resources that may be in his ownership and control, he enters into exchange relationships with others in society. Men begin to specialize in producing things for which they have a comparative advantage over their neighbors to extend their trading opportunities with others in the growing

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The rules for the free society are fairly simple and straightforward: thou shall not kill; thou shall not steal; thou shall not bear false witness—no fraud or deception in relationships with others.

community of men. The interdependency that a division of labor creates makes each member of society increasingly conscious that he must serve his fellow men in order to accomplish his own ends.[19]

The individuals on that great chessboard of society move themselves about, forming connections, relationships, and associations with those around them as they discover opportunities for mutual improvement. Patterns do take form; configurations of human interconnection do take shape. But these patterns are not planned or designed; they emerge from the relationships that men choose to establish among themselves, with no conscious intention of generating much of the institutional order and structure that result from their market and social interactions.

As Hayek pointed out, drawing on the insights of some of the political economists of the eighteenth century, the social order that develops is to a great extent "the results of human action, but not of human design."[20] And, as Hayek emphasized, it is all to the better that this is the case. Why? Because the emergent social patterns, order, and institutional arrangements incorporate the knowledge, ability, and creativity of the multitudes of human participants. No single mind or group of minds—no matter how wise and well-intentioned—could ever know, understand, and appreciate all the fragmented knowledge, insight, and ability that exist as divided knowledge and creative potential in the minds of all the members of humanity as a whole. If all that man knows, that he can do or might imagine, is to be taken advantage of and brought into play for the general good of all mankind, then every individual must be left free to use what he knows, and do what he wants to do, according to his own design.[21]

What irks the social engineer when he looks around at the free society is that it appears to be a world without a "plan," a jumble of social chaos. What the classical liberal sees is a world of multitudes of plans, each one being the plan given by an individual to his own life. There is order, pattern, and structure to this world, but an order, pattern, and structure generated out of the interconnections that individuals have formed among themselves through their voluntary market and social relationships.

The rule of law provides the societal rules of the road within which those individuals may freely move about as they see fit. The rules for the free society are fairly simple and straightforward: thou shall not kill; thou shall not steal; thou shall not bear false witness—no fraud or deception in relationships with others. Beyond these types of simple rules, each individual is free to follow his own conscience and interests in all other matters.

A Lawless World

The world in which we live today is to a growing extent a lawless world, if by lawless we mean circumstances in which the rule of law is increasingly not respected or even understood. The law, in practice, is more and more end-dependent in its purpose and application. Some in society do not like the pattern of relative income shares that results from the interactions between employers

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and employees, so they use the power of the state to redistribute income and wealth according to their conception of material justice and fairness.

Others do not approve that some in society like—indeed enjoy—smoking, especially while they are having a drink and after a meal, so they restrict or increasingly ban private establishments from setting their own rules on the basis of what they consider the preferences and desires of their customers by totally prohibiting smoking in what they declare to be "public" places. Still others believe that the citizenry cannot be trusted to make sufficiently wise choices concerning their own retirement planning or their medical-insurance coverage, so they enact laws and regulations that impose rules that will guarantee the creation of the social engineer's preferred patterns for such social behavior on the part of those whose choices and decisions he considers less enlightened than his own.

To assure, as the phrase goes, that there will be "no child left behind," the social engineers are imposing more national regulations on standards for education in schools around the country, to create more of a single pattern of learning and its measured success to which all educational institutions and children will be required to conform. One of the contributions for which Hayek was awarded the Nobel Prize in economics was his insightful reminder that competition can and should be seen as a discovery process, through which each of us discovers our potential and ability in the rivalry of the marketplace. Indeed, Hayek said, it is in the competitive process that men are stimulated to see how far they can push themselves and their abilities, what new ideas and important innovations they can come up with, and what their most productive and valuable role and place may be in the social system of the division of labor for the mutual benefit of all.[22] How can this play out in the crucial arena of devising new and better ways of educating the young, when the men of system, the social engineers, in Washington, D.C., increasingly nationalize the content and form of learning in all the schools across the nation?

The latest trend in this direction is the growing fear that the new global economy threatens the livelihood and material standards of living of the American people. A chorus of special-interest groups and intellectual elites are warning that investment opportunities and many relatively well-paying jobs are being lost to other countries around the world. They conjure up nightmare visions in which America buys everything from the rest of the world, where labor is cheaper and production costs are much lower, and that America is left with nothing to manufacture at home. International trade and investment will leave the United States an economic wasteland of poverty and dependency on cheap products made in China and outsourced labor services supplied by India.

What we are hearing is the 21st century's version of the early nineteenth-century Luddites, who at that time raised the alarm that the Industrial Revolution would soon result in unemployment for the vast majority as the emerging machine age made human labor redundant. The industrial machine age did indeed result in the replacement of a wide variety of human labor. But this freed tens of millions of hands to then do new and different work with the assistance of more and better tools, so that the quality, variety, and quantities of goods and services available to all were expanded beyond anything that could be imagined at the time. Our modern standard of living began with the Industrial Revolution and the machine age that it introduced.

After thousands of years of appalling poverty, more and more parts of the world are beginning to join and catch up to the West in terms of standards and quality of living. We should be hailing this as one of man's greatest hours in his long existence on this earth. This great transformation will, of course, bring changes, even dramatic changes, in the structure and patterns of the global system of division of labor, as billions of people on other continents find new and more productive and profitable niches in the world's network of trade, commerce, and industry.[23]

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Each of us, Leonard Read said, must become candles of liberty in the darkness of collectivist ideas. The brighter we each shine through our understanding and ability to articulate the meaning of freedom, the more we will be beacons that can attract others.

America's Role in the World

Inevitably, this will change, as well, America's role and place in the global community of nations. Some industries and service sectors will diminish or be entirely replaced by producers and suppliers in other parts of the world. But trade is a two-way street. Imports are paid for with exports. In fact, the only reason a nation exports anything is to use those foreign sales as the means of paying for goods and services that can be purchased from abroad less expensively than if they were to be made at home.

Other industries and service sectors will emerge or expand in America, instead, as the citizens of the United States discover in the arena of international commerce and competition their better and more efficient niches to serve their neighbors at home and their fellow human beings around the world. When the next generation looks back at our present time, say, 25 years from now, they will be able to see the market processes by which these new patterns and trading relationships emerged and took shape. And they will see the improvements and gains that resulted from these processes in a way that we cannot yet imagine, any more than those who feared the machine age in the early decades of the nineteenth century could imagine the wondrous improvements in the human condition that were visible when one looked back at the beginning of the twentieth century.

We can never possess tomorrow's knowledge today. We can never know what innovations, creative ideas, and useful improvements will be generated in the minds of free men in the years to come. That is why we must leave men and their minds free. The man of system, the social engineer, who sees only the apparent problems from these global changes, wants to plan America's place in the new, emerging global economy. But to do so, he must confine and straitjacket all of us to what his mind sees as the possible, profitable, and desirable from his own narrow perspective with the knowledge he possesses in the present.

Soviet-style central planning may seem to have been cast into the dustbin of history (to use a Marxian phrase), but in fact the underlying idea is alive and well around the world, including the United States. Ideological elites and voting majorities not only do not recognize the individual rights of others to live their lives in ways of their own choosing, but they increasingly do not even show tolerance for any range of difference of opinion and action. They are determined to plan our lives and our futures—and indeed even our thoughts in this increasingly anti-liberal age.[24]

Leonard Read, the founder and first president of FEE, once penned a book with the title *Anything That's Peaceful*.[25] In it he said that if we are to regain the liberty that we have lost, and the fully and consistently applied rule of law that once was the guardian of our liberty and freedom of enterprise, we must reawaken in our fellow citizens an understanding of what liberty, the rule of law, and individual self-responsibility mean. But this cannot come about unless each of us is willing to participate in a process of self-education in which we become knowledgeable about liberty and its opposite. And we must be willing and courageous enough to consistently defend free-

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dom, self-responsibility, and all of their implications.

Each of us, Leonard Read said, must become candles of liberty in the darkness of collectivist ideas. The brighter we each shine through our understanding and ability to articulate the meaning of freedom, the more we will be beacons that can attract others. Quoting an old English saying, Read reminded us that it is the light that brings forth the eye and the ability to see.

None of us who care about liberty can avoid in good conscience our responsibility in this matter. I will close with the words of the Austrian economist Ludwig von Mises, who was one of the greatest and brightest lights for liberty in the twentieth century: "Everyone carries a part of society on his shoulders; no one is relieved of his share of responsibility by others. And no one can find a safe way for himself if society is sweeping towards destruction. . . . What is needed to stop the trend towards socialism and despotism is common sense and moral courage."[26] □

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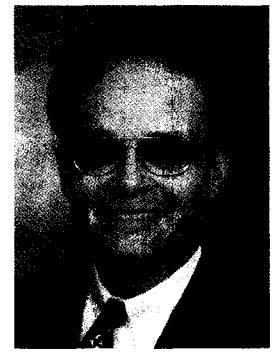

Telecom Regulations Don't Create Competitive Markets

Few of us would understand the jargon employed in a recent ruling overturning telecommunications regulations issued by the Federal Communications Commission (FCC). But it's not necessary to know what "UNE-P" means or how "hot cuts" are performed to take an interest in the proceedings. At stake are fundamental principles of interstate commerce and property rights.

Three times in the past eight years, federal courts have struck down as arbitrary and over-reaching prior versions of the FCC regulations governing competition in local telephone service. Three times the commission has been ordered to revise its autocratic rules. The latest incarnation of the regulations, unveiled last October and struck down on March 2, is in some respects the worst of the lot, as if the FCC were increasingly deaf to judicial censure.

It's a troubling state of affairs for obvious reasons. Regulatory uncertainty has inhibited telecom investment and innovation, thereby eroding the reliability of the network as well as impeding economic growth. The commission's intransigence, meanwhile, insults the separation-of-powers doctrine and exposes the telecom industry to regulatory abuse. It's a case study of the government bull in the proverbial china shop.

The blame largely falls on Congress. Key elements of the 1996 Telecommunications Act decreed outcomes but not means, leaving the FCC to expand its regulatory empire. Indeed, the agency subsequently issued more than *10,000 pages* of new rules, predictably unleashing a frenzy of litigation.

Ironically, the 1996 Act was intended as an instrument of reform. In a major departure from six decades of state and federal policy, Congress rightfully sought to end the monopoly franchise system in local phone calling. Unfortunately, lawmakers presumed that government could create a competitive market through regulation—a conceit that doomed their good intentions.

The most problematic aspect of the act is the requirement that major wire-line companies such as Verizon, BellSouth, SBC, and Qwest allow rival firms to use their networks at regulated rates. Such "forced access"—a regulatory taking of private property if ever there was one—was necessary, Congress reasoned, to allow new entrants to gain market share. Once their business base was established, competitors were expected to construct independent facilities.

The FCC devised a complex formula to set access rates based on the cost of operating a hypothetical network. The phantom network would presumably feature the most advanced technologies and operate at optimum efficiency.

Of course, no such network actually exists. And with no market confirmation of these hypothetical network costs, regulators

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set the access rates artificially low. Because the rates fail to cover operating costs in many instances, the network owners are effectively subsidizing their rivals.

Not surprisingly, the robust wire-line market envisioned by Congress has not materialized. Reliance on incumbent networks has largely failed to stimulate new products or services, or even lower rates—the hallmarks of competition. In essence, forced access has simply allowed new entrants to slap their names on existing services and call it competition. Most have no incentive to construct independent facilities. And faced with the prospect of having to "share" their facilities, many incumbents have been unwilling to undertake new investment.

Disappointing Results

In Michigan, for example, the Mackinac Center found that 89 percent of the local wire lines billed by competitors in 2002 actually were serviced in whole or in part by an incumbent network, up from 62 percent in 1999. Meanwhile, there has been a corresponding decline in the proportion of lines served by independent facilities. Competitors utilized their own facilities to service a mere 10 percent of their customers in 2002, down from 29 percent in 1999.

In short, the forced-access regime has failed to achieve its most basic policy goals. As stated by securities analysts with Fulcrum Global Partners LLC: "The fact that we are no closer to a deregulated market than we were in 1995 speaks volumes for how ineffective the law was in the first place. The incremental social burden that the Telecom Act of 1996 has placed upon the industry, consumers and the country overall cannot begin to be measured."

But bad as the economic consequences have been, the surrender of constitutional and market principles is worse. There can hardly be a more direct violation of the Fifth Amendment "takings" clause than the FCC's regulatory declaration that "the incumbent must accept the novel use of, and modification to, its network facilities." From the standpoint of network owners, the regulated access rates are downright confiscatory.

Proponents claim that the regulations are necessary to neutralize the monopoly advantages once enjoyed by incumbents. (So the FCC, which for 60 years preserved that monopoly system, is now the architect of reform?) But such regulatory punishment appears to conflict with the ex-post-facto clause of the Constitution, leaving us to wonder how our law-abiding actions today will be sanctioned by government sometime in the future.

The latest rewrite of the telecom rules also undermined the tenets of interstate commerce. The commission majority had directed 50 state utility commissions (and the District of Columbia) to determine which elements of the local telecom network should remain communal property. But as the U.S. Court of Appeals for the D.C. Circuit ruled in March, this delegation of authority represents a "fundamental misreading of the law."

A handful of "conservative" lobbyists have attempted to argue that this delegation of regulatory authority to the states is proper from a federalist perspective. But interstate commerce is unquestionably the province of the federal government, and nothing so defines modern telecommunications as the absence of geographic boundaries.

It is worth noting that the most rapidly expanding sectors of the telecom industry—wireless and cable telephony—are the least regulated. As history has repeatedly shown, technological progress thrives in the absence of centralized authority. Both alternatives represent significant competitive challenges to local wire-line carriers—without subsidies or onerous regulation.

If we strip away the technical particulars that often cloud this policy debate, what we essentially are left with are disparate visions about the power of markets to maximize technological innovation. It is clear that the regulatory model has failed to achieve policy objectives.

All this is yet another reminder that deviating from time-tested principles of a free marketplace, property rights, and due process under constitutional rules carries costly consequences. □

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Ideas On Liberty
MAY 2004

The Wisher and the Legislator: A Lesson from a Fairy Tale

by Joseph S. Fulda

The fairy tale, or fable, is a literary device by which adults—who have learned many of life's lessons the hard way—impart wisdom to the young. It is at once an exciting and captivating story and a lesson in moral imagination. It succeeds because it is simple and direct.

Across most cultures, there is a recurring fable: The fairy tale of the three wishes. The poor chap who is at once hero and fool of the story is given three wishes. The first wish is inevitably spent on something foolish and trivial, but the wish is fulfilled powerfully and right away, thereby emboldening the wisher. The next wish is much more serious, one that will thoroughly change the life of the wisher all at once. Inevitably, it brings disaster and ruination upon him. The third wish is humbler—to be rescued from the disasters of his earlier wishes, with everything in his world restored to normalcy. This wish also is granted, and the hero comes away a much sadder but much wiser man.

What is the moral of this story? It is not quite that we do not know our own minds and what we really want, because of course in some important senses we do. I think the teaching of the story is that we are not wise enough to get what we want all at once by merely wishing for it, for we cannot foresee the multitude of consequences that will undoubtedly ensue, many of which we would not want. Unlike when objects of our desire are earned slowly, there is no feedback about the wisdom and appropriateness of the goal, no turning back or perhaps merely turning aside—the wish is carried out by the genie exactly as it is expressed in words. There is thus no opportunity for re-evaluation, re-examination, and ultimately reconsideration, as there is when one embarks on a long path to a goal.

Furthermore, when working toward a goal, a person commits his whole self to it in that he must take action after action to achieve it, and he must do so over a prolonged period. When wishing, however, he does not have to put thought, care, or repeated and sustained effort into attaining his goal. Each action a man has to put toward a goal takes effort, and each such action is therefore a reason to abandon the goal if it is not worth—if it is no longer worth—the effort. The actions that men must take to achieve their dreams dampen their enthusiasm for them. Engineers call such dampening a "negative feedback loop," and it is the hallmark of a stable system that it centers around such a loop. "Positive feedback loops" quickly go out of control and rock the system's limits.

So what, then, is it fair to conclude about knowing one's own mind? At every step of the way toward a goal, a person knows whether the next step is worth it in light

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of that small step's consequences—small enough to be seen and felt—and the effort required. Whether the step after that will also be worth it is something he will not *finally* decide till it is ripe for decision. The saving grace is that even if a subsequent step is no longer worth the effort, often that does not mean the prior steps were in vain: Instead of turning back, the man may turn aside, and choose a path parallel rather than perpendicular to the original path.

Laws Are Wishes

The astute reader will already have divined the point we wish to make. The legislator is a wisher. Laws are wishes. And legislatures have not learned the teaching of the child's simple but profound tale. Consider: Laws, like wishes, are effected at any speed—even all at once; with the exception of Prohibition and a few other less notable cases, they are rarely reconsidered. The legislatures of this land do not take incremental steps toward whatever end they desire and then re-evaluate both ends and means, always in light of the continued worthiness of the goal and the additional effort required. Laws are not like life's goals. Many of them are foolish and trivial, like the first wish in the fairy tale. Many of them are much more serious and wreak havoc on everyone and everything in sight in countless unthought-of ways. But unlike the sadder but wiser fool who through his learning becomes the hero of the tale, the legislators do not learn simply to undo their wishes expressed as legal fiats. Rather, seeing the untoward consequences of their wishes, they remain, sometimes willfully, sometimes not, ignorant of the causes of the calamities their wishes have brought about. And they proceed to "repair" the damage with another, yet another, and yet still another wish, and the calamities multiply as the wishes are effected by the genies of government enforcers.

That, my friends, explains the current mess. □

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Losing the Law: From Shield to Weapon

by William L. Anderson and Candice E. Jackson

In recent years lawmakers and enforcers have increasingly criminalized business behavior. From the prosecution of Michael Milken and other Wall Street figures in the 1980s to the indictment of Martha Stewart in 2003, federal criminal law has become a wild card influencing economic matters in unpredictable ways. This affects everyone. Should this criminalization continue, the result will be less private investment, as frightened executives decide that investment in this country is not worth risking a stint in federal prison.

We must first explode the myth that only "guilty" people get in trouble with the law. Federal law today encompasses such a wide range of actions that the majority of people reading this article have probably engaged in conduct that could result in federal criminal charges.

For example, readers who have miscalculated their income taxes and sent the incorrect form through the mail have committed mail fraud, a federal felony. Anyone who has sent wrong figures or information over the Internet has committed wire fraud. In the first case, if you had the help of another person in figuring (or misfiguring) your taxes, that is conspiracy.

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Federal prosecutors usually don't pursue individuals making innocuous mistakes, but they can if they so wish. The U.S. Supreme Court already has ruled that *intent* to commit a crime (the ancient doctrine of *mens rea*, or "guilty mind") is no longer a requisite element in some criminal prosecutions. The Supreme Court has created an entire category of statutory crimes it calls "public welfare offenses," permitting Congress and state legislatures to provide criminal penalties for acts and omissions that technically violate a regulatory statute.[1] The unfortunate defendant need not even know that a violation of the law occurred.[2] While the Court initially applied this doctrine to permit Congress to dispense with *mens rea* requirements for regulations concerning things like possession of narcotics and hand grenades, the doctrine has evolved to include ordinary business activities, and threatens today to become the rule for criminal liability rather than the exception.[3]

The evisceration of *mens rea* is a mechanism for empowering the state. In a 1943 Supreme Court decision, Justice Felix Frankfurter declared: "The good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries must be trusted. Criminal justice necessarily depends on 'conscience and circumspection' in prosecuting officers."[4]

In other words, government employees whose careers depend on convicting people determine the standard of justice. However,

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reality is different from Frankfurter's idealistic picture. Mary Sue Terry, former attorney general of Virginia, recently declared that modern justice "has turned from seeking truth to seeking convictions."[5]

If a prosecutor's own words are not evidence enough of the alarming trend in criminal law, consider a speech at Harvard University in February 2003 by Judge Edith Jones of the Fifth Circuit U.S. Court of Appeals. In the speech Judge Jones claimed that the American legal system has been "corrupted almost beyond recognition." According to the *Idaho Observer*, "Judge Jones explained that zealous prosecutors are increasingly willing to sacrifice what is morally right for political expediency. She also said that the change has come because our nation's legal philosophy has descended to 'nihilism.'"[6]

Jones further declared: "The integrity of law, its religious roots, its transcendent quality are disappearing. . . . The first 100 years of American lawyers were trained on [William] Blackstone, who wrote that, 'The law of nature . . . dictated by God himself . . . is binding . . . in all countries and at all times; no human laws are of any validity, if contrary to this. . . .' The Framers created a government of limited power with this understanding of the rule of law—that it was dependent on transcendent religious obligation."[7]

The Martha Stewart Case

Federal investigators often target individuals by stretching already dubious laws and regulations beyond recognition. Take the Martha Stewart case. Stewart's indictment and conviction demonstrate just how far federal criminal law and its application have strayed from their Blackstonian roots. Her name surfaced in the press because of an *illegal* leak of information from a congressional committee investigating the sale of ImClone Systems stock in December 2001. In other words, someone committed a felony by leaking the information to the press, but federal investigators ignored that. To make things worse, someone from the U.S. Department of Justice almost certainly *illegally* leaked information to the press on the grand jury testimony given in the Stewart case prior to her indictment, yet another felony that prosecutors ignored.

There is an obvious pattern here. Government officials who are sworn to uphold the law broke that law—and could do so without any fear of reprisals, because for all intents and purposes the law does not apply to them.

The U.S. Government charged Stewart with obstructing justice, conspiracy, and securities fraud. "Obstruction of justice" sounds ominous, but is often nothing more than a refusal to incriminate oneself to federal investigators—a refusal that should be protected by the Fifth Amendment. There is no fixed standard defining the offense, and federal officials have near-absolute discretion over when to charge it. The basis for the obstruction charge against Stewart was not that she merely failed to cooperate, but rather that she lied when government agents asked why she sold her ImClone stock. (It should be noted that the FBI takes a more casual attitude toward lying when it's done by its own agents. The syllabus from an official FBI course for new recruits on ethics states that subjects of investigations have "forfeited their right to the truth."[8]) Even if Stewart did lie, one can only wonder: how can it be obstruction of justice not to tell the truth to a government agent who is asking about something that is none of the government's business? (Insider trading is not an objective crime, and Stewart was never charged with it.)

"Conspiracy" simply means that more than one person was involved; in Stewart's case it is conspiracy to commit obstruction of justice. Furthermore, the evidence needed to prove a conspiracy can be so circumstantial (such as phone records showing a conversation) or untrustworthy (uncorroborated "accomplice" testimony) that probably any one of us could be accused and convicted of conspiracy to do *something* illegal.

The "securities fraud" charge against Stewart (later dismissed by the trial judge) was especially egregious. Prosecutors pinned

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this "crime" to her indictment just because she publicly declared her innocence of the insider-trading charges rumored to be forthcoming against her, but which were never filed. U.S. Attorney James B. Comey (who since has been promoted to the number-two position in the Department of Justice) stated that Stewart's public declaration of innocence was actually illegal stock manipulation because it kept the price of Martha Stewart Living Omnimedia higher than it would otherwise have been. For mounting a public defense in search of a fair trial before the government had proved her guilty of *anything*, the government added another potential prison term to her bill of indictment.

Congress has created a classification of legal violations that we have termed "derivative crimes."[9] Under the Constitution, states are the entities responsible for defining and prosecuting "common law" crimes, such as theft, robbery, and murder. To work around the Constitution's mandate of federalism, Congress and the Supreme Court began to reinterpret the Commerce Clause to mean that Congress could invent a national set of crimes to cover activities that only remotely affect interstate commerce.

While Congress created the first "derivative crime," mail fraud, more than a century ago, this kind of crime really began to affect businesses in 1970 with the creation of the Racketeer Influenced and Corrupt Organizations Act, or RICO. Created supposedly to deal with "organized crime," RICO created a new class of crimes in order to bring mob suspects into federal court where it was believed that the chances of convicting them of *something* would be stronger.

The RICO law declared that any discernible "pattern" of crimes, such as prostitution, gambling, and the like, could be bundled into a new *federal* crime of "racketeering." (Of course, since no one "racketeers" someone else, this new "crime" was a statutory fiction.) It did not take long for prosecutors to discover that they could apply it against ordinary business people about whom it was not even alleged that they had connections to "organized crime."

In the 1980s RICO enabled Rudolph Giuliani, then U.S. attorney for the southern district of New York, to go after upstart investment firms on Wall Street. With approval from established Wall Street firms that did not appreciate competition from companies like Princeton-Newport and Michael Milken's Drexel Burnham Lambert, Giuliani used RICO to destroy those companies and jailed Milken in the process.[10]

Fighting the War on Drugs

The War on Drugs took off during the 1980s, so federal prosecutors demanded—and received from Congress—new "crime-fighting tools" to deal with drug rings. The Comprehensive Crime Control Act of 1984, for example, expanded the definitions of crimes like "money laundering," which is little more than depositing money allegedly garnered from criminal activity. While "money laundering" brings visions of a Miami Vice drug kingpin purchasing a new Mercedes with suitcases full of hundred-dollar bills, the charge usually is applied in order to add prison time for people convicted of other white-collar crimes. The idea is that if someone has committed a crime in the course of business, the money earned by that business was ill-gotten, which then kicks the "money laundering" tripwire. Prosecutors found that such laws also increased their ability to target anyone they wanted, despite the intended scope of the legislation.

Like RICO, most crimes in the federal code are works of fiction, not real offenses. Even the crimes that deal with real wrongdoing, such as "fraud," are defined differently from what most people would consider criminal fraud to be. Intent to deceive is usually a crucial element of fraud. For example, if I purchase a used car that has "low mileage" at a local dealer only to find out later that the dealer tampered with the odometer, I can claim to have been defrauded. But I have to prove that the dealer sold me the car with intent to deceive.

The federal system, however, attaches the term "fraud" to a wide range of cases, and denudes the term of any real meaning.

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According to the well-known criminal-defense attorney Harvey Silverglate, federal criminal law creates what he calls a "third category" of prisoners.[11] The first category, Silverglate says, consists of those who are guilty of a crime. The second category includes those wrongly convicted of a crime. The third are those convicted under vague and broad statutes for engaging in conduct that a reasonable person would not have assumed is criminal. This third category represents not a reasonable system of laws, but rather a dangerous trap for the unwary and politically unpopular.

When Ronald Reagan became President in 1981, there were about 1,500 U.S. attorneys. Today, there are more than 7,000, all of whom need high conviction rates to gain promotions and increased pay.[12] The federal prison population in early 1981 stood at about 20,000; today it is more than 170,000.[13]

Most readers will never go to prison, but their lives are affected nonetheless. As the number of people shunted into federal prisons rises, the human wreckage increases as families are devastated, and businesses and reputations are destroyed.

Because it is politically feasible to target business owners and executives, "white collar" prosecutions will continue. The political feeding frenzy that occurred in the wake of the Enron and WorldCom collapses has resulted in even broader criminal statutes,[14] and the "war on terror" has brought a host of new statutes replete with intrusive investigatory tools for use by prosecutors not just against suspected terrorists, but also against ordinary business people.

Business owners and executives are not stupid. They realize that if trends continue, the handwriting on the wall will be unmistakable: invest in the United States, risk going to prison. Entrepreneurial activity will be chilled as the public, egged on by ambitious prosecutors and demagogic politicians, demands that the prisons be filled with even more people who by any reasonable definition are innocent of truly criminal behavior.

The Founders believed that law should be a shield to protect people both from those who would prey on their person and property, and from the state itself. Today, law has become a weapon the state uses against us for the political benefit of those in power. If the original vision is not resurrected, we will lose the law altogether. □

1. The Court itself has defined "public welfare offenses" to mean violations of statutes (often carrying criminal penalties) that "depend on no mental element but consist only of forbidden acts or omissions." *Liparota v. United States*, 1985.

2. See for example, *Staples v. United States*, a 1994 case in which Justice Clarence Thomas summed up the Court's public welfare offense doctrine and refused to apply it to a statute requiring regulation of machine guns. Justice Thomas may be fighting a losing battle, however (see note 3).

3. For example, Edward Hanousek, a railroad supervisor, was convicted on criminal charges of violating the Clean Water Act when an independent contractor accidentally ruptured an oil pipeline, spilling oil into a U.S. waterway in Alaska. Hanousek was not even at the site that day and had no knowledge, intent, or ability to prevent the "crime," but his criminal conviction was upheld by the Ninth Circuit Court of Appeals, and the U.S. Supreme Court denied review of his case, *Hanousek v. United States*, 2000.

4. *United States v. Dotterweich*, 1943; also quoted in Paul Craig Roberts and Lawrence M. Stratton, *The Tyranny of Good Intentions: How Prosecutors and Bureaucrats are Trampling the Constitution in the Name of Justice* (Roseville, Cal.: Forum, 2000), p. 63.

5. Quoted in Paul Craig Roberts, "Jailing the Innocent," January 7, 2004, www.townhall.com/columnists/paulcraigroberts/pcr20040107.shtml.

6. "American Legal System Corrupt beyond Recognition, Says Federal Judge," *Idaho Observer*, March 2003, http://proliberty.com/observer/20030304.htm.

7. Ibid.

8. Quoted in James Bovard, *Freedom in Chains: The Rise of the State and the Demise of the Citizen* (New York: St. Martin's, 1999), p. 162; Bovard's source was Roberto Suro, "Law Enforcement Ethics: A New Code for Agents; FBI Trainees Lectured On Integrity, Deception," *Washington Post*, August 21, 1997, p. A.17.

9. See William L. Anderson and Candice E. Jackson, "Law as a Weapon: How RICO Destroys Liberty and Undermines the Purpose of Law as a Shield," scheduled for publication in *The Independent Review*, June 2004.

10. Appeals courts later overturned the Princeton-Newport convictions, but not before Giuliani was able to use his tenure as U.S. attorney to get elected mayor of New York City.

11. From personal correspondence.

12. Roberts and Stratton.

13. *2002 Statistical Abstracts of the United States*, compiled by U.S. Bureau of the Census. Information taken from the website of Federal CURE, www.fedcure.org.

14. When the United States was created, there were three federal crimes: treason, counterfeiting, and piracy. Today there are more than 3,000 criminal statutes and 10,000 federal regulations that can be interpreted as having criminal penalties for their violation.

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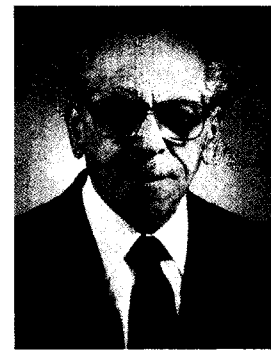
THE FREEMAN
Ideas On Liberty
MAY 2004



On Autogenic Diseases

Our bodies are physico-chemical machines. When the function of the machine deviates from what is generally considered normal and if we regard the deviation as harmful and unwanted, we call the event or process a "disease." Like all physical-chemical events, diseases have causes, which physicians call "etiology." The familiar causes of disease are pathogenic microbes, toxic chemicals, x-rays, genes (heredity), and trauma (injury).

Curiously, one of the most important causes of disease in the modern world—namely, the self, the body's owner—is not recognized as such by the medical profession. Many years ago I suggested that we call these diseases "autogenic," much as we call diseases caused by physicians or medical interventions "iatrogenic." (Webster's defines "iatrogenic" as "induced inadvertently by a physician or surgeon or by medical treatment or diagnostic procedures.")

There are many ways in which a person may cause himself to be ill, some innocent, others blameworthy, depending on the point of view of the person judging the agent's behavior. The classic example of autogenic illness is the soldier in the trenches during World War I who, in a desperate attempt to save his life, shoots himself in the foot. Called "malingering," this kind of dereliction of duty was usually punished by execution. Webster's still defines "to malinger" as "to pretend incapacity (as illness) so as to avoid duty or work." Prior to World War II, malingering was, by definition, a nondisease. Today, it is a "no-fault" (mental) disease: political-psychiatric correctness now decrees that the person called "patient" is, ipso facto, a "victim," not responsible for what ails him. (This may or may not be the case.) The idea of autogenic, or self-induced, illness negates this premise. Unsurprisingly, the idea has not caught on.

Thanks to the corrupting influence of psychiatry on medicine, faking illness is now officially classified as a disease, called "factitious disorder." The widely used Merck Manual (not a psychiatric text) states: "Patients may consciously produce the manifestations of a disease, e.g., by traumatizing their skin, injecting themselves with insulin. . . ." This is foolish. Persons intent on making themselves sick do not merely produce the "manifestations of a disease," they produce a disease, by mutilating or poisoning themselves, for example, with an overdose of Tylenol.

The American Psychiatric Association's definition of factitious disorder is even more foolish: "The essential feature is the presentation of physical symptoms that are not real. The presentation may be . . . self-inflicted, as in the production of abscesses by injection of saliva into the skin." If such abscesses are not real abscesses, then persons whose death is self-inflicted are not really dead.

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Equipped with such profound neurobiological insight into the nature of human diseases, we are appropriately unprepared—or, perhaps more accurately, misprepared—to understand the epidemic of autogenic diseases that now plague us.

Obesity as a Paradigmatic Autogenic Disease

On December 16, 2003, the *New York Times* reported that the Food and Drug Administration has approved Xenical "for the treatment of obese teenagers." A spokesman for Hoffman-La Roche, the manufacturer, is quoted as having said that this was "good news for children who battle obesity" and that "we're thrilled with the approval." That this development is good news for the manufacturer of the drug is self-evident. That it is catastrophic for children who battle obesity and our society in general is less obvious but more ominous.

The body is a machine fueled by calories. We call the fuel "food" and the act of fueling "eating." If fewer calories are put into the body than it burns, then the body will gradually lose weight and die. If more are put into it, it will become heavier than "normal," that is, obese. Xenical, we learn, "has several unpleasant side effects, including problems with bowel control, and it works best when combined with a low-calorie diet that limits foods high in fat." A diet low enough in calories is, by definition, effective in preventing obesity.

Obesity is a typical autogenic illness. Eating and not eating are voluntary acts. If we do not expect children, as well as adults, to exercise self-control over the foods they eat, over which behaviors do we expect them to exercise self-control?

Obesity may be classified as a disease for two reasons: because it is an unwanted deviation from the norm and because it "causes" (leads to the development) of other diseases, among them diabetes and cardiovascular disease. To be sure, most people who overeat do so not to become obese but for other reasons, just as most people who smoke do so not to get cancer but for other reasons. Note, however, that we call smoking a disease, but do not (yet) call overeating a disease.

Is the individual who is obese or has lung cancer responsible for his illness? (Ignore, for the sake of argument, that some nonsmokers also get lung cancer.) Eating and smoking are behaviors under our conscious control. Either we assume responsibility for our behaviors and their consequences or we assign responsibility for them to others—the manufacturers and merchants who provide us with a high standard of living and comfort and amusement—and blame them. Thus do the food companies, tobacco companies, pharmaceutical companies, and so forth, become the causes of our diseases.

None of this has anything to do with medicine or science. All of this is the consequence of post-World War II political-economic developments: obfuscating the differences between the interests of the self and the interests of others and destroying the cash nexus in the delivery of medical services.

Formerly, Jones paid for the treatment of his lung cancer, just as he paid for his cigarettes. Today, he still pays for his cigarettes, but others (the insurance pool or taxpayers) pay for his medical care. If Jones's illness is an economic burden on others, then others have a rational interest in Jones's not making himself sick.

The result is a negation of the differences between dangerousness to self and dangerousness to others: the private sphere, free of state regulation, merges into the public sphere, the object of state regulation. The principle of "caveat emptor" is replaced by the principle of "caveat vendor." Welcome to the therapeutic state. □

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THE FREEMAN
Ideas On Liberty
MAY 2004

Scotland: The Bitter Taste of Independence

by James L. Payne

For nearly a thousand years, the Scots have been struggling to gain independence from England—and a bloody struggle it has been, too, costing countless lives and sowing destruction in both countries. An act of union in 1707, and the suppression of revolts in 1715 and 1745, left Scotland firmly a part of the United Kingdom in modern times, yet the dream of Scottish independence would not die. In the mid-twentieth century a handful of activists gave this goal a somewhat violent turn, blowing up pillar-boxes of the Royal Mail and stealing Scotland's coronation stone, the Stone of Scone, from Westminster Abbey. In the end, cooler heads prevailed. The Scottish Nationalist Party (SNP, founded in 1934) persisted in a peaceful campaign for self-rule that finally bore fruit in 1997.

In that year a referendum was held in Scotland asking voters whether they wanted to create a Scottish parliament to control domestic affairs and, secondly, asking them whether they wanted to give this parliament the power to levy its own taxes. The Scots embraced both ideas: 74 percent voted for the creation of a new Scottish parliament, and 64 percent voted to give it taxing powers. Under the resulting arrangement, called "devolution," the British government in London continues to control defense, foreign policy, and monetary policy, while the Scottish government is in charge of most domestic policy areas, including education, health care, transportation, and cultural affairs. Leaders of the SNP were optimistic, thinking that the election of a separate Scottish parliament would soon pave the way to full independence—"independence heaven," as the leader of the SNP put it back in 1999.

The dream has soured completely. To understand what happened, we need to step back and review a general point about public opinion in the modern welfare state.

As originally conceived, the welfare state was expected to be an engine of political popularity. The politicians in charge of it were supposed to win honor and esteem by solving society's problems and providing the public with a vast range of free services.

It hasn't worked out that way at all. Citizens in modern welfare states are becoming increasingly disillusioned and cynical. In country after country, from Japan to Sweden, from Australia to Italy, political scientists have documented a dramatic decline in public trust in government.

One doesn't have to look far to explain why this has occurred: the welfare state cannot deliver as promised. Government can't solve most social and economic problems, for they are too complicated and too intractable to be fixed by laws, bureaucracies, and appropriations. Second, government cannot efficiently deliver high-quality, free public services. Because of its huge

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waste factor, government has to overtax to provide the service, or cut corners on quality—or both.

Finally, there is the problem of attracting praiseworthy political leaders. The original vision of the welfare state assumed farsighted, responsible, and selfless public officials. After all, if you're going to give government godlike powers and enormous responsibilities in directing a vast welfare state, you need godlike people to run it. Citizens of today are discovering—with the assistance of free and energetic mass media—that their politicians are nothing like gods, that most are shortsighted, error-prone, and dismayingly self-centered.

Hence the malaise of public opinion in the modern welfare state: citizens who deplore, even loathe, the political class. It is this malaise that has derailed the project of Scottish independence. Devolution has given the Scots a close look at what comes along with independence, namely, a modern big government with all its intrusions and pretensions. The Scots are concluding that full independence under such a government would be an indignity they can just as well do without.

Construction Scandal

The first scandal involved the construction of the building for the Scottish Parliament. This was originally projected to cost 39.9 million pounds, and those who told the politicians they were hiding the true cost were angrily rebuffed. Once construction began, cost estimates began to rise. Scots watched, first in surprise and then in shock, as the announced cost rose and rose, reaching 400 million pounds ($650 million) at last count. (Expenses included $140,000 for a reception desk that Ikea could have supplied for $4,000.) To appease the popular furor, the politicians announced the formation of a special investigating committee to find out why costs had escalated. This only added to the anger since the committee would cost an additional million pounds, and would not make any findings until after the building was completed and all the money had already been spent. (Privately, many Scots believe that the cost overrun has been caused mainly by padded contracts born of cronyism.)

The leader of the SNP, John Swinney, summed up the national mood in November 2003: "Holyrood [the parliament building] has turned from a farce into a national scandal and everyone knows it. People clearly understand that their pocket has been picked to the tune of 400 million."

One area of perpetual complaint is the nationalized health-care system. Everything that goes wrong is laid at the feet of the new government now responsible for it. Just one hospital, the new Edinburgh Royal Infirmary (ERI) opened last year, has given the government enough grief to last for generations. The hospital doesn't have enough beds to handle its caseload, so operations have to be cancelled—40 hip replacements were cancelled in October 2003 alone—and patients with acute needs have to be transported long distances to other hospitals. Newspapers revel in this kind of scandal. The *Evening News* (Edinburgh) ran a picture of one expectant mother sent 75 miles away to Dundee. "We are absolutely furious," she told the reporter.

Another press story reported that despite the shortage of beds, the ERI has deliberately kept one ward permanently closed. Administrators claimed they lacked the money to operate it. With a 6 million pound deficit, the hospital is cutting corners, and each corner cut produces another newsworthy scandal. One report detailed shortages of linen, bandages, and syringes. Another news story highlighted complaints about the high charges for parking and telephone calls. A former hospital administrator who had to spend a few weeks in the ERI as a patient told reporters about the hospital's "disgusting and inedible food," unhygienic wards, and callous and inattentive staff.

When a woman died at the hospital as a result of falling out of bed, the Scottish health minister made the "astounding mistake" (as the news story put it) of later sending the family a letter wishing her a full recovery. When a second patient was also killed falling out of a bed a few weeks later,

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opposition politicians demanded an investigation of this "shocking incident."

Whatever else one might say about it, a government-run health-care system turns out to be, as Scottish officials are discovering, a perennial source of criticism directed against the politicians in charge of it.

Reporters found a juicy scandal in the fall of 2003 at Scottish Enterprise, the government agency that is supposed to boost economic development by giving subsidies to promising firms. Instead of picking economic winners, the agency has exhibited an uncanny flair for backing losers. The *Scotsman* reported that nine of the 16 major firms Scottish Enterprise invested in have declared bankruptcy, and the value of its "investments" in private firms had plunged 70 percent.

Bureaucratic Greed

The folly of taxing productive businesses to subsidize failing ones may not bother most Scots (who are rather out of touch with Adam Smith's legacy), but they all understand another of the agency's faults: greed. The bureaucrats in charge of Scottish Enterprise are making out like bandits: the chairman has a salary of 181,000 pounds—more than even England's Prime Minister Tony Blair is paid—and each of the 12 regional directors takes down 100,000 pounds, well over the salaries of top cabinet members in the Scottish government. An SNP leader pointed out that in bygone days many directors in this unit served on a volunteer basis, without pay. Now, under a Scottish government, they were looting the treasury. "Think of Scotland a wee bit," he implored, "and consider taking a pay cut."

Everyone understands that it won't happen, that overpriced government and self-interested government officials are in Scotland to stay. Taxes have increased significantly in recent years, yet even the politicians concede that the promised service improvements haven't materialized: health-care waiting lists are as long as ever, promised class-size reductions in the schools haven't been achieved, new roads aren't being built. Where has all the money gone? Mainly into the many layers of administration needed to manage (or, perhaps we should say, attempt to manage) the sprawling, incoherent empires that the welfare state has spawned.

Paying more and getting less, the public is deeply disillusioned. In the May 2003 elections, politicians urged a high turnout as a show of support for the new Scottish government. They were rebuffed by a record low turnout—less than 50 percent. A post-election survey showed that most of the voters who stayed away from the polls did so "because they did not trust politicians to keep their promises." Now that they understand that a Scottish government does not lead to "heaven" but to waste, mismanagement, and political posturing, Scottish voters have lost interest in independence—as is evident from the declining support for the party that advocates full independence, the SNP. It went from 35 seats in the 129-member parliament in the 1999 election to 27 in 2003.

It was a well-deserved punishment. This far-left socialist party has strongly promoted the big-government cause in Scotland. In the 1999 elections, it ran on a platform of increasing taxes, on the theory that the new Scottish government could spend its way into the hearts and minds of the people.

They got it exactly wrong. It is big government with its ludicrous promise to solve everyone's problems that has killed the dream of Scottish independence. □

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THE FREEMAN
Ideas On Liberty
MAY 2004

Rome and America: The Ideology of Decline

by Harold B. Jones, Jr.

Writing in 1835, Alexis de Tocqueville attributed the United States' commercial success to American merchants' willingness to face uncertainty and danger. Europeans, he said, wait for good weather and return to port if the ship is damaged; the American "departs while the tempest still roars . . . while on the go, he repairs his ship, worn down by the storm."[1] The American settler, Tocqueville said, was "a very civilized man . . . who plunges into the wilderness of the New World with his Bible, a hatchet, and newspapers."[2] When Anthony Trollope traveled down the Mississippi in 1860, he found people living in sod huts and laboring from dawn to dusk. There was no prospect for an immediate improvement in their condition, yet they were optimistic about the future and felt not the slightest desire to return to civilization.[3]

These pictures contrast sharply with that of Americans being expected to take comfort from Secretary Tom Ridge's "message of reassurance and confidence" about the Department of Homeland Security's vigilance over a holiday weekend. They contrast also with the picture of people standing in lines at the airport, removing their shoes, and waiting meekly for an approving nod from a dull federal employee. The old attitude of self-reliant independence has died. It is not simply that the world has changed, but that Americans have. It is not simply that our government has become intrusive, but that we do not resist its intrusions. Like every other people at every other time in history, we are getting the government we deserve.

My article "Homeland Security Circa AD 285" described the bureaucratic expansion that left an empire helpless before its enemies.[4] But there is more to the story than that. By the end of the third century, Roman character was a thing of the past. The courageous ingenuity of the farmers who put on sword and shield to resist first invading Gauls and later the armies of Hannibal had disappeared. If it is true that Rome fell less to the barbarians than to its own stifling bureaucracy, it is true also that the bureaucracy took its power from citizens' inability to see the challenges of their time as a call to personal creativity and effort. Rome's fate was the result of a change in the way the Romans thought about themselves and their world.

The most important result of government controls, said F. A. Hayek, is "a change in the character of the people."[5] While this may be true, it is only half the truth. The other half is that extensive government controls give expression to the ideas of the people among whom they appear. They can arise only among a people who are psychologically prepared to submit to them. The similarities between the ancient and the modern experiences are worth considering.

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Among the proper functions of government, Adam Smith listed military defense. The desperate condition in which the Empire found itself late in the third century was not entirely unrelated to the fact that after the death of Trajan and again after the death of Marcus Aurelius, Rome's armies were withdrawn from their positions along the northern frontiers. As soon as the pressure on the borders eased, barbarian hoards began to sweep across them.

Viewed in this light, President Bush's aggressive "war on terror" is an act of genius. Terrorism is like every other human endeavor in that it labors under the constraint of limited resources. These resources can be deployed more conveniently in assaulting soldiers in Iraq and Afghanistan than in attacks on Western targets. The recent bombing of Spanish train stations, while frightening, is probably less dreadful than what would be happening if the battle had not been moved into Islam's own backyard. Like Rome at its height, the United States is protecting itself by means of relentless pressure on those who threaten it.

But there is more to the story than that. The Empire's invaders were driven by economic rather than ideological interests. They were more interested in finding enough to eat than in plunder. "Where the tribes could buy or obtain food peacefully," says Paul Johnson, "they seldom resorted to violence."[6] By narrowing the range of possibilities for peaceful trade, the policy of using the provinces' riches for the benefit of the capital city thus played a part in arousing tribesmen's hostility and in encouraging them to press on until they came to the walls of Rome itself.

Living at the Expense of Empire

The policy of exploiting the provinces, in turn, was an expression of the Romans' conviction that they were entitled to live at the expense of their empire. This conviction is remarkably similar to that of Western farmers, who think that in exchange for their votes they have a right to be subsidized by the taxpayers. World Trade Organization discussions in Cancún failed in large part because of third-world representatives' unhappiness with such things as America's $1.6 billion cotton subsidy, which gluts world markets and makes it impossible for countries like predominantly Muslim Chad and Mali to compete. The Brussels-based Center for the New Europe has said the European Union's Common Agricultural Policy is a major contributor to the poverty of Latin America, Asia, and Africa; it kills 6,600 people a day.[7] If the $125 billion the United States plans to spend on its farm program between 2002 and 2012 were eliminated, Islamic farmers might not suddenly love the United States, but their hatred would be somewhat blunted by their delight over having such a rich market for their produce. Americans, meanwhile, would have the advantages both of cheaper T-shirts and a lower tax bill.

It might be too much to hope that free trade could take the bitterness out of Islamic fundamentalism. Fanatics with a grudge against the world and a propensity for showy violence may be simply a fact of modern life. There is nothing new about organized terror: it goes back at least to some strains of anarchism, to the Western Federation of Miners, and to the Industrial Workers of the World. On the other hand, these were all responses to economic pressures associated with the rise of international protectionism late in the nineteenth and early in the twentieth century. However that may be, it is certain that Islam's unhappiness with modernity is not entirely unrelated to policies giving expression to Western farmers' conviction that they should not have to meet the challenge of international competition.

The farmers' conviction, in turn, is similar to the steel industry's belief that it had a right to be sheltered from the efficiencies of foreign business. It is similar also to the conviction recently expressed in highly skilled workers' opposition to free trade. Design engineers, machinists, and experts in information technology want to be protected from the competition of China and India, where well-trained engineers are willing to work for less than they would be paid in the

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United States.[8] American industry and workers agree with American agriculture in believing that they are entitled to a shelter from the storms of change.

Like the citizens of third-century Rome, Americans believe they have a right to live safely behind high walls. But there are hungry people waiting at the gates, and the only alternative to peaceful exchange is war.

The Source of Weakness

A few years before Tocqueville visited America, John Quincy Adams's Department of State announced this policy: "The American Republic invites nobody to come. We will keep out nobody. Arrivals will suffer no disadvantages as aliens. But they can expect no advantages either. What happens to them depends entirely on their individual ability and exertions, and on good fortune."[9] The citizens of early nineteenth-century America seem to have understood they had no right to anything except the results of their own efforts.

Over the course of the twentieth century, that understanding disappeared. The citizens of the United States learned to think of themselves as entitled to whatever their votes could buy. Herbert Hoover was elected president because he promised "a chicken in every pot" and was replaced when the said fowl failed to materialize. Franklin Roosevelt was speaking to an existing conviction when he talked about "self-evident" rights to well-paid employment, "adequate food, clothing, and recreation," medical care, retirement income, and protection from the insecurity of old age.[10] In its 1970 decision in *Goldberg* v. *Kelly*, the U.S. Supreme Court adopted the thesis of Charles Reich's 1964 *Yale Law Journal* article: government benefits met the constitutional definition of property, "not much different from the absolute right of ownership that private capital once invoked," as Reich put it.[11]

Americans once believed that property was the result of personal thought and effort. They now think of it as the result of a court decision or legislative fiat. Far from avoiding the government, they seek its intervention on their behalf. In his *Wall Street Journal* article about the Medicare prescription-drug bill, AARP CEO William D. Novelli talks repeatedly about such things as "retiree benefits" and "accessible" prescription drugs.[12] "We are stepping up our efforts in the states to strengthen Medicaid coverage and supplemental prescription drug programs," he says self-righteously. He seems not to understand that this involves costs, which someone must pay. As far as he is concerned, America's seniors are entitled to whatever they think they need simply because they are America's seniors.

But it is not just seniors. Every group that can think of a label for itself presses its claim to special treatment. When Aaron Wildavsky added up the membership of all the groups that had succeeded in gaining some form of "protection," he found that the total came to 374 percent of the American population.[13] We all think we have a right to get more for less effort; we all want to be freed from the burdens of competition; we all want to enlist the government in our cause.

This is because we cling to ideas our ancestors would have rejected as nonsense. A hundred and fifty years ago Ralph Waldo Emerson told the crowds who had gathered to listen to him that "though the wide universe is full of good, no kernel of nourishing corn" could come to a person except through his or her own effort. "Nature suffers nothing to remain in her kingdoms which cannot help itself. The genesis and maturation of a planet, its poise and orbit, the bended tree recovering itself from the strong wind, the vital resources of every animal and vegetable, are demonstrations of the self-sufficing and self-relying soul."[14]

These words would strike modern Americans as uncaring. The bookkeepers, mechanics, artisans, and secretaries to whom they were originally addressed nodded to one another and agreed that it was just ordinary common sense.[15] Our ancestors were acutely aware of something we seem to have forgotten: the relationship between "earning" and "deserving." Like the ancient Romans, the people of the United States seem universally to labor under the illusion that their citizenship is a free ticket to the good things of life.

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The End of Civilization as We Know It

Edward Gibbon's *The Decline and Fall of the Roman Empire* begins with the death of Marcus Aurelius in AD 180. The date was a turning point because it was the moment at which power passed into the hands of leaders who were unable the meet the demands of their times. This was a function less of personality than philosophy. The second century was the high tide in the story of Rome because it was an age during which the educated classes were imbued with an ideology that made for order and progress. When that philosophy went out of style, the Empire began to come apart.

The second century was the great age of Stoicism, which according to William Lecky "furnished the principles of virtue, coloured the noblest literature of the time, and guided all the developments of moral enthusiasm."[16] Although it included no specifically economic doctrines, Stoicism encouraged the self-reliant attitudes on which free markets depend. Its emphasis on individual responsibility, the inevitability of change, and the ultimate beneficence of short-term discomfort created a spirit of independence in everyone who came under its influence.

The last of the great Stoic philosophers was the Emperor Marcus Aurelius. Describing the work of his predecessor, he praised Antoninus Pius' "unvarying insistence that rewards must depend on merit." The Stoic political ideal, he said, was "equality and freedom of speech for all, and a monarchy concerned primarily to uphold the liberty of the subject."[17] Aurelius' thinking foreshadowed Adam Smith's doctrine of the "invisible hand": in one place he says that "a man is always justified in seeking his own good,"[18] and in another that "all of us are working together for the same end; some of us knowingly and purposefully, others unconsciously."[19] "Look at the plants, the sparrows, ants, spiders, bees," he advised, "all busy with their own tasks, each doing his part towards a coherent world-order."[20]

The similarity between these ideas and the sentiments of our American ancestors is

Marcus Aurelius

more than merely a coincidence. The nineteenth century was the second age of Stoicism. Emerson was a life-long student of Seneca, a Stoic sage.[21] Second-century Romans found the Stoic ideal in the stories of Plutarch; nineteenth-century Americans found it in the stories of Horatio Alger and the McGuffey's *Reader*. The George Long translation of Marcus Aurelius' *Meditations* went through many printings because it was on the "must read" list of Victorians on both sides of the Atlantic.[22]

In the time of Aurelius himself, however, the Stoic ideal was becoming unfashionable. His footnote on where he was writing tells us a great deal: "Among the Quadi, on the River Gran,"[23] in other words, out on the frontiers, defending Rome from the consequences of its own protectionism. Behind the frontiers, imperial and municipal authorities found the public's entitlement mentality pressing them for the maintenance of "fair" prices for grain, oil, and wine. Prevented by such regulations from obtaining a return on their efforts and their capital, landholders found themselves unable to patronize the shops of urban arti-

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sans. Voluntary cooperation began to disappear, and men who thought the crises of their time could be solved by means of force seized the reins. Aurelius was called back from fighting the barbarians to put down a rebellion by Avidius Cassius. The next hundred years would be the century of the generals.

"The marvelous civilization of antiquity," Ludwig von Mises says, "perished because it did not adjust its moral code and its legal system to the requirements of the market economy."[24] It would be better, in terms even of Mises's own ideas, to argue that ancient civilization grew rich under the influence of one moral code and disintegrated as that code disappeared. One ideology carried it to prosperity and another to disaster.

America became great because its citizens once subscribed to the principle of individual responsibility. What will happen now that this principle has been discarded remains to be seen. The Roman experience suggests that it will not be pleasant. □

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13. Philip K. Howard, *The Death of Common Sense* (New York: Warner Books, 1994), p. 126.
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15. Johnson, *American People*, pp. 405–08.
16. Maxwell Staniforth, "Introduction" to Marcus Aurelius, *Meditations*, trans. Maxwell Staniforth (London: Penguin, 1964), p. 9.
17. Marcus Aurelius, ibid. pp. 39, 40.
18. Ibid., p. 172.
19. Ibid., p. 100.
20. Ibid., p. 77.
21. Will Durant, *Caesar and Christ* (New York: Simon and Schuster, 1944), p. 307.
22. Maxwell Staniforth, "Translator's Note" in *Meditations*, p. 32.
23. Ibid., p. 44.
24. Ludwig von Mises, *Human Action*, 3d ed. (New York: Regnery, 1966), p. 769.

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THE FREEMAN
Ideas On Liberty
MAY 2004

Would the Poor Go Barefoot with a Private Shoe Industry?

It is said that while we may rely on private initiative to supply "nonessentials," some things are so important to a decent life that we cannot trust the vagaries of the competitive market. Some people would not get the vital product or service. The only solution, supposedly, is government provision to all, often free of charge. The problems with this argument, as well as the great benefits of a capitalist economy, are shown by examining the shoe industry.

Most would agree that shoes are essential to a comfortable or decent existence. Today even the poorest have shoes, and most people of modest means have several pairs. Shoes are available in an enormous variety of types, styles, and colors, at modest prices. It was not always so. In America just over 150 years ago, shoes were made locally, on an individual basis, by skilled craftsmen. This may seem idyllic, but it was not. They were extremely expensive in real terms, so much so that they could even be included in a will. Most people had only one pair that would be made to last for years. The poor had no shoes; indeed, being without shoes was one of the classic marks of poverty.

Things began to change in 1848 with the invention of the first shoe-sewing machine, and shoemaking moved from the home and small workshop to factories. However, making shoes was complicated and difficult to mechanize. In particular, the process of "lasting," by which leather was molded to fit a model foot, proved a great challenge. Moreover, the capital cost of the new machinery was a barrier for many small shoemaking firms.

Two men were to transform this situation in the United States and subsequently elsewhere. The first was Jan Matzeliger, born in 1852, an immigrant to the United States from Dutch Guiana (now Suriname), and the son of a Dutch sea captain and a slave woman. While working in a shoe factory in Massachusetts, Matzeliger devised a method of mechanizing the lasting process. He perfected it after years of work and great expense, and obtained capital to create a production model from two local investors, Charles H. Delnow and Melville S. Nicholls. Matzeliger got a patent in 1883. His machine cut the cost of producing a pair of shoes in half. A hand laster could produce no more than 50 pairs a day. Using his machine, one could produce up to 700 pairs. Matzeliger and his partners set up the Consolidated Lasting Machine Corporation, in association with two new investors, George A. Brown and the second main figure in our story, Sidney W. Winslow. Matzeliger sold his patent rights to the newly formed corporation in exchange for stock, which made him a wealthy man. He died from tuberculosis in 1889.

Winslow was a business genius. The owner of a small shoe factory, he transformed the industry by a crucial business innovation. In 1899 he engineered a merger of the three main shoemaking-machinery

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companies to form the United Shoe Machinery Corporation (USMC). Instead of selling its machines, the USMC leased them, which meant that shoe manufacturers no longer bore the capital cost, including depreciation, of their machinery. USMC also relieved them of much of the maintenance cost.

The combination of technical invention and business innovation transformed shoemaking. The cost of shoes fell to a fraction of what it had been, while the wages of workers more than doubled by 1905. Thanks to the ease with which producers could obtain the machinery, the industry became very competitive, which encouraged innovation and kept down costs. This led to the situation we enjoy today where even the poorest have shoes and the variety constantly increases. When leasing was applied outside the United States, often through arrangements with the USMC, the industry was transformed there also.

Let us suppose now that shoes were supplied by government. We have much evidence of what the result would be. Everyone would have shoes, but the quality would be poor. There would be almost no variety (except of the Army kind—two sizes: too large and too small) and certainly no "fun" shoes. The cost would be high, and there might even be rationing. If some private supply were allowed, we would have a few private firms providing high-quality shoes at exorbitant cost to the rich and the ruling elite.

Privatize Shoe Production?

Anyone suggesting that perhaps private enterprise should produce shoes more widely would be met with the indignant response: "What! Do you want the poor to go without shoes?" This, of course, is precisely the situation we face with many services provided predominantly or exclusively by government, notably education. The point is that once a product is supplied by government, we find it hard to imagine that it could be provided in any other way without disastrous results. The assertion that a product is essential is supposed to end the argument.

The story of the U.S. shoe-machinery industry also highlights several other points. One is the critical part played in history by productive and creative individuals whose names are not remembered or lauded in the way that those of monarchs, politicians, and generals are. Sidney Winslow did more to benefit millions of people than many "public figures," yet is almost forgotten. Another is the way a market economy undercuts prejudice. As a black man, Jan Matzeliger faced much prejudice, particularly in his social and religious life. But in the business world his color did not matter, and he had no trouble finding investors. Only his talent and application mattered.

Finally, the story of the USMC shows the bad effects of misguided public policy. An enormously successful business, worth over a billion dollars by 1960 and a model employer, United Shoe was attacked by the Department of Justice in a famous antitrust case, was broken up in 1968, and today no longer exists. (Ironically, the leasing policy was targeted as a tool of USMC's alleged monopoly practices.) The U.S. shoe manufacturing industry has also mostly vanished.

So when you put on your shoes or go to buy a pair, be thankful and remember Jan Matzeliger and Sidney Winslow. Even more, be thankful that this essential product is not provided by government and imagine what services provided by the government could be like if the contemporary equivalents of those two men were let loose on them. □

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THE FREEMAN
Ideas On Liberty
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Estonia Moves to Liberty

by Norman Barry

We have read a lot about former Soviet regimes struggling to shake off the last remnants of communism. It has not been easy. Even Czechoslovakia (now the Czech Republic), when first led by the free-marketeer Vaclav Klaus, had difficulties with privatization (why were the banks left in public hands?), and Poland, despite successes, found itself with a reformed socialist party in charge.

Indeed, in most of these regimes the old communist parties simply changed their names and got back into power. But at least they were engaged only in simple rent-seeking (the acquisition of wealth through politics), rather than attempting to restore communism. All of eastern Europe is united in its contempt for anything approaching the "nationalization of the means of production, distribution, and exchange."

As you might expect, the most successful of the "transition economies" is the one least talked about. I refer to Estonia, a tiny Baltic country, just opposite Finland, with a population of less than 1.4 million and a tragic history in which it was the plaything of two totalitarian superpowers, Nazi Germany and the Soviet Union. The loss in the twentieth century of Estonia's liberty and independence imbued its citizens with a determination to re-establish its own indigenous freedom. It is working spectacularly well.

A little bit of history is relevant here. Estonia is a separate country from the other Baltic states, Latvia and Lithuania, and has its own language, culture, and history. It was originally ruled by the Russian tsars, but between 1918 and 1939 it was an independent nation, precariously wedged after 1933 between the barbaric regimes of Nazi Germany and the Soviet Union. It was a victim of the cruel cynicism of the pre-war pact between these two and was occupied first by the USSR in 1939 and then the Nazis between 1941 and 1944. From 1944 to 1990 it was again the victim of Soviet communism. Nearly all the elements of the hitherto thriving Estonian civil society were repressed, and the country became little more than a province of the Soviet Union.

When the Soviet regime began to disintegrate in the late 1980s, Estonia was in the vanguard of the dissent. It had emotional, intellectual, and cultural capital that had not been entirely depleted by communism. And there was a touch of romance in its successful bid for freedom. In 1988 there occurred what became known as the "singing revolution." Vast numbers of the inhabitants of this tiny country simply stood before the public buildings and other symbols of communism and sang their traditional songs. Had Gorbachev used Soviet tanks against such united opposition, one suspects they

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would have been powerless to preserve communism. Free elections were held in 1990, and a new constitution (based on earlier experiments in law and liberty) was formulated in 1991. Estonia adopted the German Civil Code, which is quite protective of property and contract. Estonia could now construct its own future. It chose liberty in its polity and in its economy too.

It quickly set about the task of dismantling the communist state. A more or less complete privatization had been achieved by the mid-1990s. There are competing political parties in the country, and there are fierce local battles between them, but there is no real division on the crucial issues. All agreed that Estonia must be a real market-based Western economy and have an independent judiciary determined to protect both economic and civil liberty. It has achieved those goals.

Economic Progress

For much of the postwar period, Estonia had been connected to the Soviet economy, but it quickly sloughed off these links. Those elements, industrial and agricultural, that depended on state support were left to survive on their own in the market. There are now no subsidies. Estonians quickly saw the advantages of free trade and opened up their markets to world competition. Free trade was established with the European Union (EU) in 1993, and two completely free ports were created, Munga and Sillamae. The connection with Europe proved particularly advantageous in 1998, when Russia defaulted on its debts. As we shall see, that connection has its downside, but for a nation newly emerging from communism, it was invaluable. Estonia now has one of the freest trading systems in the world. Apart from a period in the mid-1990s, it has enjoyed steady economic growth.

What was truly remarkable was Estonia's rapid adaptation to economic reality once the ruinous Russian inheritance had been shelved. The country has become much more of a service economy: taxes have been kept low, and economic interference has been virtually nonexistent. There is now a single personal flat tax at 26 percent. A plan supported by all parties would reduce this to 20 percent by next year. Also, to encourage more foreign investment, all reinvested corporate profits were exempted from the corporate income tax beginning in January 2000. Without a repressive and exploitative tax system, the government has managed to balance its budget.

As a further gesture to modernity, virtually the whole country has become electrified.[1] Around half of the population has computers at home, and of those, nearly 75 percent have access the Internet. Almost everybody in the country has easy use of modern communication methods. This makes Estonia's labor force highly mobile and adaptable.

All this has made Estonia a desirable place to invest. The growth rate now exceeds 6.4 percent per year, after falling back a little during the Russian financial crisis; unemployment is now 10 percent and declining. Labor is virtually free and ready to quickly take up new opportunities. Estonia is a member of the World Trade Organization, but one wonders why it bothered. The country had already done what all free-market theorists say a country should do: it simply declared unhindered commerce as its unbending policy. Per capita GDP is now $5,000 (up from slightly under $3,000 in 1997). That is not great, but it is very good by east European standards and comfortably ahead of Turkey (less than $4,000), a country that has a much longer experience with a modern market economy.

All this progress by market methods has attracted little attention from Western observers, I guess because it was too simple and straightforward. The privatization process was much more transparent than the complex and only partially successful one in Czechoslovakia, and it had none of the crime associated with the Russian advance to capitalism. Estonia was undoubtedly helped by the fact that it is a small country with an integrated social structure, which provided informal constraints on excess. The country was recently ranked sixth out of 161 countries in the Heritage Foundation *Index of Economic Freedom*.

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The free-market world might have been remiss in its attention to Estonia's unglamorous journey to freedom, but the (moderate) left has been predictably critical of some of its alleged failings. Naturally, social policy has drawn most of the fire. While unavoidably retaining elements of the Soviet welfare system, especially old-age pensions, the new free Estonia has not been at all extravagant in social spending. Hence, the critics. There was a complaint that only 1.5 percent of GDP was spent on children and the family, and critics argued that welfare payments in general were too low.[2] Apparently it lagged behind other eastern countries. It never crossed the critics' minds that Estonia's neglect of welfare may be one reason for its success.

An early European Commission report on the country praised its successful transition from communism, but commented on its backward level of social services and its poor record on gender-equity issues. Critics seem to forget that Estonia's small size and intricate and intimate social structure make self-help and communal spirit much more effective at ameliorating poverty and social deprivation than an expensive and inefficient welfare state. It is also probably learning from the West's mistakes.

Hidden EU Danger

All east European countries that successfully applied for membership in the EU in 2003 have approved of it by referendum. Estonia had a 66.84 "yes" vote in September, though there is evidence that support is deeper in the intelligentsia and the middle classes than in the working class. One can see why the politics of the EU should be superficially attractive to eastern Europe. These countries had been under Soviet tyranny, and, in some cases, Nazism, and one can appreciate their desire for security in a greater Europe. But there is a hidden danger in EU membership that will one day dampen the enthusiasm.[3] Some of the regulations and social policies of the EU might put their newly won freedoms at risk. Of course, the EU's regulatory socialism is a long way from communism, but its rigorous enforcement will delay the transition to a full-fledged market economy. It is too early to say what the effect will be.

The most dangerous feature of the EU legal structure is the enforcement of *aquis communautaire*, according to which new members are obliged to accept all its existing laws, regulations, and policies, as well as new ones. The new states of course had no part in the making of these, and they can only be altered by the unanimity of a treaty, an almost impossible task.

How will this affect Estonia? It is difficult to say, but things are not promising. The EU has the ludicrously inefficient Common Agricultural Policy, which shuts out cheaper foreign food and keeps some people tied to the land. Estonia does not have a large agricultural sector and may escape the worst of this. Then there is the European Social Policy, which contrasts markedly with Estonia's meager arrangements; as we have already noted, Estonia is under pressure to increase its welfare expenditure. There is also the future danger of tax harmonization, which would boost EU taxes way above Estonia's current levels.

The worst of the EU would emerge if its constitution were to be adopted because that would create a whole new set of "rights" (mainly welfare "rights" guaranteed by the state) and new stultifying regulations, and would abolish jurisdictional competition. However, the European constitution in its original form is virtually dead and, looking optimistically, the new member states may slow the union's progress toward statism and excessive regulation.

But it is never wise to be optimistic about Europe, and one day Estonians may come to regret the sacrifice of their burgeoning free market for an overvalued political respectability. □

1. See *Newsweek*, March 11, 2002.
2. "Gender and Social Policy: Comparing Welfare States in Central and Eastern Europe and the Former Soviet Union," *Journal of European Social Policy* (10) 2000, pp. 240–66.
3. See Norman Barry, "A Classical Liberal's Conception of Political Liberty: America and Europe Compared," *The European Journal*, vol. 9, no. 3, 2001, pp. 13–16.

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CAPITAL LETTERS

Where Is the Dollar Defined?

To the Editor:

I was belatedly reading in the November 2003 issue of *Ideas on Liberty* when I came across something that caught my eye. This was the statement in George Leef's book review of *Pieces of Eight* by Edwin Vieira, Jr., claiming that the Constitution defined a dollar as 371.25 grains of fine silver. I could not recall ever seeing such a definition in my admittedly dilettantish studies of this document. As the statement was even referenced to a specific portion of the constitution, Article I, Section 9, clause 1, it was a simple matter to quickly check the reference. This confirmed that the matter detailed here was that there should be no prohibition by Congress of migration or importation of persons (slaves) prior to 1808.

The only reference to coining money in the Constitution is the authorization to Congress "To coin Money and regulate the Value thereof and of foreign Coin" in Article I, Section 8. There is also the prohibition for the States to "coin Money . . . [or] make any Thing but gold or silver Coin a Tender in Payment of Debts" in Article I, Section 10. (Regrettably, no such prohibition was given to the federal government.)

As neither of these portions of the Constitution codifies the specific value of a dollar in terms of silver content, I was wondering if this notion was an error of the author or of the reviewer? Could you shed any light on this matter?

—R. R. SCHOETTKER
By e-mail

George Leef replies:

My thanks to R. R. Schoettker and the other readers who caught my mistake. The legal definition of the dollar as a coin with 371.25 grains of pure silver is in the Coinage Act of 1792. See http://landru.i-link-2.net/monques/coinageact.html.

Social Security Reform Can Be Less Paternalistic

To the Editor:

John Attarian argues in "Is Social Security Reform Paternalistic?" (*The Freeman*, January/February 2004) that plans to replace or reform Social Security with a system of compulsory private pensions are "far from being advances," and are at least as paternalistic as Social Security. His arguments, though, are puzzling.

By calling Social Security "paternalistic," Attarian means that it takes away the individual's responsibility to provide for one's retirement and thus encourages individuals to give less thought to the future, treating them like feckless children rather than responsible adults. Attarian is clearly right about this, but a compulsory private system—for example, such as proposed by the Cato Institute—*significantly increases* the amount of freedom to plan for one's retirement and increases one's responsibility to make such decisions.

In a private system, one has a property right in one's pension, which one lacks in the pay-as-you-go system of Social Security, and thus one gets to choose, within limits, how to invest one's contributions, and within limits, how to receive the results of one's contributions during one's retirement. Of course, a compulsory private system is not a voluntary, purely libertarian, retirement system, since it forces the individual to contribute to a pension savings account and prevents the individual from making certain savings and investment decisions, but the issue at hand is whether a compulsory private system is better than Social Security, not whether it is the best system or the least paternalistic system. The only place I can find in Mr. Attarian's article where he tries to refute the argument that a compulsory private retirement system increases freedom and responsibility compared with Social Security is when he says that the compulsory private systems are "messier" than Social Security. This may be true, in that a system where there is zero freedom to decide what happens with your payroll taxes may be less messy than a system where one has a right,

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hedged with restrictions, to choose how to invest one's contributions. However, the issue isn't a quasi-aesthetic judgment about messiness, but rather which system gives people more freedom to plan their lives and their retirement and in that sense treats them more like competent adults.

I have written this letter, not merely because I am puzzled by Mr. Attarian's argument, but because the matter is a very important one. Unless Mr. Attarian thinks Social Security will simply collapse and that a purely libertarian system will arise out of its ashes, libertarians need to come up with a feasible liberty-increasing alternative to Social Security and other major welfare-state programs. A system of private compulsory savings and insurance is one such alternative that has been elaborated and defended by a number of libertarian writers (including me; see the forthcoming "The Moral Case for a Market-Based Retirement System" in *Social Security and Its Discontents*, ed. Michael Tanner, Cato Institute) and fellow travelers. If Mr. Attarian has a better feasible alternative, I and other readers of *The Freeman* would be quite interested in learning about it.

—Daniel Shapiro
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Associate Professor of Philosophy
West Virginia University

I was very puzzled by John Attarian's article on Social Security reform. Social Security is roughly 24 percent of the money going into the politicians' hands in Washington. We are talking real money here, over $500 billion annually. Why do you think the Washington establishment is fighting reform proposals with personal retirement accounts (PRAs)? PRAs are about real political power and real political change.

Giving each worker more control and ownership over their retirement assets is key to decentralizing power away from Washington. Once every worker has savings in the capital markets of our country, it will make a world of difference. . . .

Real savings in PRAs, with the miracle of compound interest, will give all Americans the ability to create real wealth. Taking those funds out of the hands of the politicians and putting them into workers' individual accounts will be a big step forward for freedom. Yes, it is not a perfect world, with each individual having complete control over his or her life. But it is a big step in the right direction. . . .

—Bob Costello
bobcostello89@hotmail.com
President, SocialSecurityChoice.org

John Attarian replies:

I did not make an "aesthetic" judgment about "messiness," simply a judgment of the obvious fact that these schemes of forced saving and investment are more paternalistic than Social Security because the government is meddling and exerting control in many more ways: the decision to save; the forced saving of tax money; where the savings may be invested; how long the investments are to be held; when they may be drawn on; how much one may receive; and in what form (lump sum, annuity, etc., etc.). This is obviously far more, and far worse, micromanagement of one's life than Social Security undertakes. My image of the hovering mother overseeing Billy's every move is quite accurate.

As for a feasible alternative, given the political realities I think the most we can hope for is to phase Social Security out. The Social Security Act should be repealed, and with it the payroll tax, which was intended to create a mentality of entitlement and make the program untouchable. Social Security should be converted to a rigorously means-tested benefit financed out of general revenue for those born before 1965. The younger generations, born after 1965, should be fully on their own, free to make their own arrangements for old age with fully voluntary IRAs, which should be totally tax-free as compensation for their loss of all claims to Social Security benefits. □

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BOOKS

Give Me a Break: How I Exposed Hucksters, Cheats, and Scam Artists and Became the Scourge of the Liberal Media . . .

by John Stossel

HarperCollins • 2004 • 294 pages • $24.95

Reviewed by Richard M. Ebeling

In the eighteenth century, Adam Smith explained the three forces at work against the establishment and maintenance of economic freedom. In his first book, *The Theory of Moral Sentiments*, Smith warned of the arrogance and danger of what he called "the man of system," or the social engineer, who presumes to redesign man and society according to his own conception of a virtuous community. He considers people to be nothing more than pawns on the great chessboard of society, to be moved about to fit his own ideological ideal and plans. (See my essay "Free Markets, the Rule of Law, and Classical Liberalism," pp. 8-15 of this issue.)

In *The Wealth of Nations*, Smith lamented what he called the other two forces hindering the preservation of economic freedom: "the prejudices of the public" and "the power of the interests." By the prejudices of the public, Smith meant the difficulty that many people have in following the logical arguments of the advocates of freedom, and the ease with which they fall victim to the demagogic appeals of those who promise short-run political favors and privileges at the expense of longer-run liberty and prosperity.

And by the power of the interests, Smith was referring to the influence of special groups who receive political benefits from the government in the form of regulations and subsidies at the expense of the rest of the society. Smith warned that they will use all the means at their deposal to destroy those who threaten the continuance of their privileges. Indeed, nothing can save the opponent of government privileges from "the most infamous abuse and detraction, from personal insults, nor sometimes from real danger, arising from the insolent outrage of furious and disappointed monopolists."

John Stossel of ABC News has experienced the wrath of all three of these anti-market forces. In this recent book, *Give Me a Break*, he recounts his odyssey as a television news journalist who has traveled from being a typical anti-capitalist "liberal" to a staunchly pro-market libertarian.

He first made his fame as an "in-your-face" investigative reporter on New York television who went after con artists, crooks, and corrupt businessmen. Stossel tracked them down and exposed their rip-offs of innocent and often naïve consumers. What struck him was their total amoralism, as reflected in their wanton ability to lie right into the camera with no remorse or apparent sense of guilt.

He assumed that what was needed was ever-stronger government regulation and policing of the marketplace to curb the unbridled criminality of the "greedy" and anti-social conduct of too many businessmen. But then he began to look into the conduct and motivations of the regulators and bureaucrats from whom he expected a solution to these "market failures." Stossel soon discovered that they either had their own agendas for power and control, or served the anticompetitive actions of selected special-interest business groups. So he decided to investigate and report on the nature of government in practice, as well as the ideas and ideologies behind political intrusiveness in society.

Rather quickly, Stossel came face to face with Adam Smith's "man of system," the ideological social engineer. He unearthed the twisting of facts justifying the regulation and control over such things as consumer choice, market-driven production decisions, and the environment. His exposés resulted in an avalanche of accusations that he was in the pay of business interests and that he was against the poor and the public good. In other words, he was a dangerous "enemy of the people."

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Then he faced the "prejudices of the public." He received hate mail from viewers of his television specials demanding that he be fired, killed, or, at the very least, exiled from the human race. How could he question the good intentions of the government or the desirable results of the regulatory state unless he was, at the minimum, unbelievably stupid or, more likely, the incarnation of evil in the world?

Finally, he faced the "power of the interests." Unions, business interests, and professional associations that eat at the government trough attacked him as a vile and dangerous threat to the "working man" and the betterment of America. In addition, the politicians and bureaucrats, whose anticompetitive policies he put into the public eye, tried to squelch his television specials.

But in spite of the most determined attempts to gag him, or to get him removed from his high-profile television position, he has survived. His television specials unmasking leftist ideologies and lies, and the abuse of political power, have had consistently high ratings.

Page after page recounts the details of his encounters with politically corrupt businessmen and power-lusting bureaucrats. He exposes the fraudulent methods used to spread myths and create fears about the extent of poverty and the quality of life in America, and the safety of products available to the average citizen in the marketplace. And he highlights the absolute contempt for the rights of others shown by those who use the state for their own purposes.

Stossel ends his book with a series of clear, crisp chapters defending the logic and benefits of the free market, the importance of personal and civil liberties, and the underlying value of freedom in general. John Stossel's journey in the world of television journalism is proof that truth can win out. □

Richard Ebeling is president of FEE.

FDR's Folly: How Roosevelt and His New Deal Prolonged the Great Depression

by Jim Powell

Crown Forum • 2003 • 336 pages • $27.50

Reviewed by Burton Folsom, Jr.

The Great Depression of the 1930s was by far the greatest economic calamity in U.S. history. In 1931, the year before Franklin Roosevelt was elected president, unemployment in the United States had soared to an unprecedented 16.3 percent. In human terms that meant that over eight million Americans who wanted jobs could not find them. In 1939, after almost two full terms of Roosevelt and his New Deal, unemployment had not dropped, but had risen to 17.2 percent. Almost nine and one-half million Americans were unemployed.

On May 6, 1939, Henry Morgenthau, Roosevelt's treasury secretary, confirmed the total failure of the New Deal to stop the Great Depression: "We are spending more than we have ever spent before and it does not work. . . . I say after eight years of this Administration we have just as much unemployment as when we started. . . . And an enormous debt to boot!"

In *FDR's Folly*, Jim Powell ably and clearly explains why New Deal spending failed to lift the American economy out of its morass. In a nutshell, Powell argues that the spending was doomed from the start to fail. Tax rates were hiked, which scooped capital out of investment and dumped it into dozens of hastily conceived government programs. Those programs quickly became politicized and produced unintended consequences, which plunged the American economy deeper into depression.

More specifically, Powell observes, the National Recovery Administration, which was Roosevelt's centerpiece, fixed prices, stifled competition, and sometimes made American exports uncompetitive. Also, his banking reforms made many banks more vulnerable to failure by forbidding them to

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expand and diversify their portfolios. Social Security taxes and minimum-wage laws often triggered unemployment; in fact, they pushed many cash-strapped businesses into bankruptcy or near bankruptcy. The Agricultural Adjustment Act, which paid farmers not to produce, raised food prices and kicked thousands of tenant farmers off the land and into unemployment lines in the cities. In some of those cities, the unemployed received almost no federal aid, but in other cities—those with influential Democratic bosses—tax dollars flowed in like water.

Powell notes that the process of capturing tax dollars from some groups and doling them out to others quickly politicized federal aid. He quotes one analyst who discovered that "WPA employment reached peaks in the fall of election years. In states like Florida and Kentucky—where the New Deal's big fight was in the primary elections—the rise of WPA employment was hurried along in order to synchronize with the primaries." The Democratic Party's ability to win elections became strongly connected with Roosevelt's talent for turning on the spigot of federal dollars at the right time (before elections) and in the right places (key states and congressional districts).

Powell's book is well researched and well organized. His chapter titles are a delight. He synthesizes a mass of secondary sources (and some primary sources) in making a strong and persuasive case that the New Deal was a failure and that the Roosevelt presidency, at least in its first two terms—was a disaster. Powell covers all the major New Deal programs; he draws on the research of historians both "liberal" and conservative; and he is nuanced—this is no hatchet job—in that he concedes that some of Roosevelt's policies, such as tariff revision, were more economically sound than, say, his industrial and agricultural policies.

FDR's Folly takes its place on the shelf alongside Gary Dean Best's *Pride, Prejudice, and Politics* and his more recent *Retreat from Liberalism* as liberating revisionist works that challenge the long-standing adulation of Roosevelt given by almost all historians. In the most recent Schlesinger Presidential Poll (1997), the historians and "experts" chosen by Arthur Schlesinger, Jr., collectively ranked Roosevelt as the greatest president in American history, even though every other American president had lower unemployment rates than Roosevelt did for his first eight years in the White House. As late as 1999, David Kennedy won the Pulitzer Prize for a book (*Freedom from Fear*) that largely praised the New Deal as a legislative program and Roosevelt as its author.

With the dawning of the 21st century, we may be witnessing the final departure of Roosevelt's loyal academic propagandists and those targeted recipients of his federal largess. In such a climate, Jim Powell has given us, with *FDR's Folly*, a refreshing, must-read account of the New Deal. □

Burton Folsom is the Charles Kline Professor in History and Management at Hillsdale College and author of The Myth of the Robber Barons, *currently in its fourth edition.*

Can Gun Control Work?

by James B. Jacobs

Oxford University Press • 2002 • 304 pages • $27.50

Reviewed by Jeffrey A. Miron

Can Gun Control Work? is a first-rate addition to the literature on gun control. The book is not an attempt to advocate either side of the debate. Instead, it is an analysis of whether various types of control can achieve their stated objectives, especially reducing violence and crime. Jacobs concludes that gun control cannot work, by which he means it cannot effectively keep firearms out of the wrong hands or reduce crime to any significant degree.

This is an unusual piece of scholarship, especially in the literature on gun control. It argues strenuously that controls are unlikely to have the effects hoped for by their advocates. Yet Jacobs is not a gun devotee. It

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appears that he is saddened by his conclusions, that he would prefer to live in a world without guns, and that he perceives guns to have far more negatives than positives. However, Jacobs consistently concludes that essentially all currently envisaged types of gun control fail to have the desired effects.

The book begins by identifying the problem for which gun control might be the "solution." Jacobs concludes that the key problem is violent crime, rather than suicides or accidents. Suicide is a quantitatively important issue, but suicides are not a critical factor creating a demand for gun control. Accidents with firearms are a cause for concern, but these incidents are rare and mainly affect persons who have "assumed the risk" of being around guns. Jacobs dismisses the notion that society should pass gun-control laws, knowing they will be minimally effective, simply for the sake of "doing something."

After outlining the question to be addressed, Jacobs reviews the history of gun control in America. This is an excellent summary for those new to the subject and a useful review for others.

Jacobs then discusses the impediments to further gun control. One is the Second Amendment and the widespread belief among gun owners that it guarantees an individual right to keep and bear arms. Jacobs suggests that even under an individualist interpretation of the amendment, there is still scope for regulation of firearms. But he sees the technical implications of the Constitution as less relevant than long-standing hostility to gun regulation on the part of a substantial fraction of the country.

A second critical difficulty that faces additional controls is the large number of guns in circulation. This fact, combined with the durability of most guns, implies that even if no new firearms were obtained by anyone in the United States from some point forward, there will still be a high rate of gun ownership for decades. Thus even perfectly effective controls on new ownership cannot address problems related to existing guns.

The third key impediment that Jacobs emphasizes is the multitude of mechanisms by which new and existing gun-control laws can be circumvented or evaded. Any restrictions on the sale of guns are undone to a substantial degree by straw purchases, fake IDs, gun thefts, and unscrupulous federal firearms licensees. Jacobs notes that all these avenues for circumventing control apply even if both primary and secondary purchases are subject to background checks and even if all guns are registered. The only possible mechanism for addressing the multiple opportunities for criminals to get guns is confiscation of existing guns combined with prohibition of all new guns. Jacobs dismisses that approach as utterly impractical, both because of the large existing stock of weapons that owners will give up only under duress and because prohibition will generate a black market.

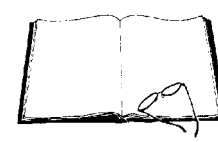
Given the author's conclusions, it might appear that gun-control opponents would welcome this book with open arms. That is not quite right, however.

Those opposed to controls will share most of Jacobs's conclusions, and they will be pleased to see those conclusions coming from someone who is not a fan of guns. Nevertheless, opponents of gun control will find the book unsatisfying—because while Jacobs is thoughtful and persuasive in his criticism of most gun controls, his critiques are about the limits of controls rather than about the possible benefits of guns.

That approach leaves unaddressed a deeper question: would eliminating guns be desirable if the existing impediments were removed? Jacobs doesn't answer that question, and the omission will give control opponents pause.

Can Gun Control Work? is the kind of calm, rational evaluation of public policies that is all too rare today. □

Jeffrey Miron is a professor of economics at Boston University.



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The Real Environmental Crisis: Why Poverty, Not Affluence, Is the Environment's Number One Enemy

by Jack M. Hollander

University of California Press • 2003 • 237 pages • $27.50

Reviewed by Jane S. Shaw

The extraordinary thing about this excellent book is not its content as much as its source. Jack M. Hollander is a retired professor of energy and resources at the University of California, Berkeley. Although he has had an impressive career in the field of energy (he has more than 100 publications to his credit), in the past he did not differentiate his views from those of scientists who are pessimistic and even alarmist about the environment.

For example, a 1992 book Hollander edited, *The Energy-Environment Connection,* featured scientists such as Stephen Schneider, a well-known proponent of government control to slow down global warming, and John Holdren, who expressed alarm about the "folly of failing to stabilize world population." Although it avoided inflammatory rhetoric, the book treated global warming as a severe problem and expressed pessimism about acid rain and air pollution.

Hollander has not repudiated his past work, but has shifted gears. It's as though he sat down one day and completely rethought, without bias, the seriousness and extent of environmental problems. However it happened, he has come to the conclusion that poor people in developing countries suffer from the worst environmental problems: hunger, disease, and dangerously unsanitary water. Environmental problems in Europe and North American simply pale in comparison. "Reducing poverty throughout the world should be a top priority for environmentalists," he writes.

The environmental crisis of poverty is the theme of the book, but another theme is inextricably entwined and almost more dominant. That is Hollander's reassessment of the severity of environmental issues. For example, he doesn't call global warming an imminent catastrophe. He says there are still many scientific uncertainties, and "if it turns out that human activity is adding to the natural warming, the amount will probably be small, and society can adjust to that as well, at relatively low cost or even net benefit." In some circles, this is heresy.

Hollander is optimistic about reducing pollution from automobiles too. Already on the decline, this pollution is likely to disappear entirely, he says, as competition develops between the hybrids (electric and gasoline-powered cars) and cars powered by hydrogen fuel cells. He predicts that the "worldwide deterioration of air quality that accompanied the rise of the automobile culture will be permanently reversed, and the world's dependence on petroleum will probably be drastically reduced, as well."

Nor does Hollander blindly support alternative energy, such as solar or wind power. He concludes that much effort to jump-start these alternatives is misplaced. The governments of such wealthy nations as the United States are subsidizing "large-scale renewable technologies for which there is little need," yet ignoring solar applications that could help poor people in rural regions lacking electricity. He says that "poor countries have tremendous need for renewable energy sources, and a number of ingenious yet affordable technologies have been available for years."

As these examples illustrate, Hollander has written a book that, like Bjørn Lomborg's *The Skeptical Environmentalist,* offers upbeat views about issues usually treated as crises. Unlike Lomborg, Hollander doesn't seem to be challenging the establishment. He is an insider telling it the way he sees it. Perhaps his moderate stance is one reason why this book hasn't received as much attention as has the Danish statistician's.

Hollander has made an effort to consider literature from both the doomsday and skeptical sides. I was, however, dismayed by his selection of a passage from Dickens's novel *Hard Times* to illustrate air pollution in the nineteenth century. ("It was a town of red

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brick, or of brick that would have been red if the smoke and ashes had allowed it," the passage begins). Dickens, a master of fictional exaggeration, is hardly a reliable authority on air pollution. I'm also a little surprised that Hollander is unaware of the growing literature (started by economists) surrounding the environmental Kuznets curve. This correlation between income and pollution shows that as countries become more wealthy their environments initially deteriorate but then become cleaner. Discussion of this would have underscored his point.

These are minor criticisms. Although it comes as no surprise to many of us that poverty is the environment's number one enemy, at long last, thanks to Hollander, others may find it out too. □

Contributing editor Jane Shaw is a senior associate of PERC—the Property and Environment Research Center—in Bozeman, Montana, and coauthor with Michael Sanera of Facts, Not Fear *(Regnery).*

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THE FREEMAN
Ideas On Liberty
MAY 2004

Have a Canadian Orange

Suppose gasoline became so expensive that getting oranges to Wisconsin raised their price to $3 each. If that price were expected to persist for a long time, there would probably arise a Wisconsin citrus industry with all the trimmings. Orange orchards would be planted near the Illinois border where the weather is warmest. There would be a Wisconsin Citrus Growers Association taking out ads to tell the citizens of Wisconsin about the health advantages of genuine Wisconsin orange juice. There'd be a number of orange-juice bottling plants opening up too.

The price of an orange in Wisconsin would still be a tad expensive, maybe $2. It would take some serious capital investment in greenhouses and heating systems to overcome the Wisconsin climate's disadvantages as a place to grow oranges, and the price would have to cover those costs. But it could be done. Oranges would be a bit of a luxury. Most people wouldn't eat them as regularly as they do now.

It might even be worthwhile to truck in oranges from Canada. It's a short haul. True, it's colder in Canada. Not much. But a little colder. So the greenhouse and heating costs might be a little higher. But suppose Canada had lower wages than Wisconsin. Even after the higher heating costs, let's say a Canadian orange grower could sell an orange for $1.50 and still make a profit. There'd be rejoicing in the supermarket aisles of Green Bay. Brunch-goers in Madison would be toasting each other with fresh-squeezed OJ.

Standing in a Green Bay supermarket and weighing the virtues of a premium Wisconsin orange and an imported Canadian one would be pretty easy. Canadian oranges would flood in. Some Wisconsin growers would start losing money—trying to meet the Canadian competition at only $1.50 might be just too hard. They'd start lobbying the legislature to ban Canadian oranges. After all, they'd explain, Wisconsin is a better place to grow oranges than Canada. It's warmer. It would be foolish to let in Canadian oranges simply because Canadians have lower wages. That's an artificial advantage.

I doubt lovers of orange juice and Hunan beef with orange sauce and screwdrivers (the drink, not the hardware item) would be interested in the exact reason that Canadian oranges were helping to make the food and drink they love more affordable. And they'd be right. It wouldn't matter if Canadian oranges were cheaper because Canadian orange growers were able to pay their workers less, or if Canadian soil happened to have a good mix of nutrients for citrus-growing, or if the Canadian natural-gas companies received subsidies that keep heating costs artificially low. The only thing that would matter is that oranges cost less. Citizens would have more money left over for other things. They'd also have a lot more oranges to enjoy, now that the prices were lower.

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The citizens of Wisconsin would have a higher standard of living.

The Wisconsin Citrus Growers Association would argue that all those cheap Canadian oranges were going to cause some unemployment in the Wisconsin orange orchards. That would cause some hardship for a while. But someone would be sure to notice that if the Canadians used some of their land to grow oranges for Wisconsin, then some of those Wisconsin orchards would be freed up to use for something else. They could be planted with grass for dairy cows to munch on. The dairy industry could expand. There would be more jobs in that industry. Without Canadian oranges, it would be worth giving up some cheese to have oranges. But if you could get oranges from Canada, it would make more sense to use that land for dairy farming.

So what's the best use of the land in Wisconsin? Is it better for dairy farming or better for oranges? It seems obvious to us in the real world we live in that the "best" use of Wisconsin's land is dairy farming. In the real world, that's true because transportation costs from Florida are low enough to make Wisconsin orange orchards an absurdity. But if for some reason Florida oranges weren't available, then the best use of Wisconsin land might no longer be dairy farming. And if cheese suddenly gets cheaper to make somewhere else, someday it might be better to turn those dairy farms into the next best alternative, whatever that might turn out to be given the nature of the land and the skills of the people of Wisconsin.

High-Tech Jobs to India

I've been thinking about cheese and oranges because a lot of people are worried about America losing high-tech jobs to India. We think of America as the "best" place to do programming in the same way we think of Wisconsin as the best place to make cheese and Florida as the best place to grow oranges. Programming jobs "belong" here. The worriers argue that the lower wages of Indian programmers are an artificial advantage, not a "natural" one.

Keeping those jobs here if Indians can do them more cheaply makes no more sense than keeping those orchards going in Wisconsin in a world where Canadian oranges are available. It's particularly costly when Florida oranges can move cheaply. So too with programming jobs. If Indians are capable programmers and their wages are low, then we give up a lot to artificially keep the jobs here via some sort of protectionism or barrier to outsourcing.

Yes, says the skeptic, but it's a bad trade—low prices for lost jobs. But that's not the real tradeoff. The number of jobs isn't fixed. The number of high-tech jobs that involve information isn't fixed either. Letting India do some of those jobs for American firms more cheaply than they can be done here frees up the resources to do new things we can't imagine and that will create the new job opportunities. And some of those opportunities will be in high-tech firms that are able to expand because they've saved resources leveraging Indian labor. □

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